

**Helping Hand -The Border Duress Call:
Military Assistance to Federal Agencies
in the Aftermath of September 11, 2001**

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HELPING HAND -THE BORDER DURESS CALL:
MILITARY ASSISTANCE TO FEDERAL AGENCIES IN THE
AFTERMATH OF SEPTEMBER 11, 2001

by

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A Research Report Submitted

In Partial Fulfillment of the Graduation Requirements

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The views expressed in this paper are those of the authors and do not necessarily represent the official policy or position of Harvard University, the Department of Defense, the US Army, US Air Force, Army and Air Force Reserve, and the National Guard.



Harvard University

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Executive Summary

Thesis Question: How can the Department of Defense best provide direct assistance to federal agencies executing preventative measures associated with homeland security?

New and improved methods are required for the DOD to efficiently provide direct assistance to federal agencies in the future. This assistance is critical to our national security and it is critical to the mental well being of the American public. From March to September 2002, soldiers helped to secure our borders making a very bold statement concerning the government's intentions in securing the homeland; to keep America safe we must be able to assure the public that our borders are secure. A provocative reality was quickly revealed; there exists a distinct gap in the DOD directives on how to provide direct assistance to federal agencies operating in a law enforcement capacity. To closely examine the process, identify deficiencies and understand how to make improvements, this paper investigates the deployment of soldiers to our borders in five progressive segments:

- Developing the situation which faced the nation immediately following the events of September 11, 2001 - Securing our Land Borders
- Exploring existing directives, statutes and duty statuses for placing soldiers on the border - The Bases for Military Involvement with Civil Authorities
- Analyzing existing methodology and exploring legal limitations and justifications for detailing soldiers to each department - A New Arrangement
- Highlighting the problems faced in mobilizing, training, and applying use of force restrictions - Operational Constraints and Limitations
- Comparing soldiers in the State of Michigan who worked under different statuses while accomplishing the same job - Averting Catastrophe in Michigan

Securing our Land Borders

Shortly after the attacks on the World Trade Center and the Pentagon, the federal and state governments initiated a series of national defense measures. Land ports of entry into the United States became impassible. New guidance brought about strict and thorough inspection criteria - Alert Level I. These mandated criteria put traffic flow at a trickle through the ports of entry. Places economically dependent on cross border commerce faced the reality of industrial plant closures. Paradoxically but predictably, the American public demanded not only increased security and a guarantee from future attacks but also a return to near pre September 11 commerce levels.

This paper focuses on the deployment of National Guard soldiers to the land ports of entry in the central and northeast quadrants of the United States - Maine to Minnesota. At these ports manpower and equipment shortages quickly became apparent. The United States Customs Service (USCS) and the Immigration and Naturalization Service (INS) turned to a familiar and noble source of manpower - specifically the National Guard. The USCS and INS directly worked with the state military counter drug teams and new the capabilities that exist within the National Guard. This request, however, varied significantly from anything in the past. Instead of working with the federal inspectors the soldiers would be working for the inspectors.

The Bases for Military Involvement with Civil Authorities

To understand the problem of placing soldiers directly under the control of a federal agency we must comprehend where the deficiencies exist. Homeland security is the broad framework that surrounds five basic items: prevention of terrorist attacks, reduction of America's vulnerability to terrorists, minimization of damage from attacks, recovery from terrorist attacks and homeland defense. Three out of the five items are clearly addressed in Department of Defense (DOD) directives and regulations. Unfortunately, prevention from terrorist attacks and reduction of America's vulnerabilities are not. It is plausible to say that prevention and reduction are both *federal* and *state* programs that require constant attention and support. Clear guidance exists for the National Guard to support state agencies in virtually any situation. The

problem reveals itself when the federal need exceeds the steady state requirement and the DOD becomes the source of manpower and equipment to fill these surge requirements.

The Department of Defense consists of five basic entities: the Army, Navy, Air Force, Marines, and Coast Guard. In the early history of the United States, armed militia protected the sovereignty of the country. As world borders became more accessible, the militia and the Navy required forces that could fight on foreign soils. The Army became that force. The militia not to be lost in history reformed into the National Guard and the Army Reserve, commonly referred to as the reserve component. Hence, the Army (and the Air Force after 1947) consists of three components: the full time force, the National Guard and the Reserve.

To bring National Guard and Reserve forces into an active status one of five different mobilization statutes must be invoked: full mobilization, partial mobilization, Presidential reserve call-up, the 15-day statute, or reserve component volunteers. These statutes transform citizens into soldiers. Once transformed, the soldiers occupy one of two duty statuses - Title 10 or Title 32. Title 10 is the status of the full time military. Title 32 is an active status initially developed to place citizens on federally funded active duty for training under command and control of their respective state Governor. The Governor also has a status to support emergencies and contingencies within the state - state active duty. State active duty is completely funded by the state.

A New Arrangement

Three challenges present themselves in putting soldiers to work for the USCS and INS. Planners first had to overcome reoccurring frustrations that are endemic to placing soldiers in the support of civil authorities. The second challenge pushed the limits of existing directives by assigning soldiers to federal agencies. This assignment placed the soldier under the direct supervision of the respective agency. Finally, the soldiers would not only work directly for the agencies they would also be working under the context of law enforcement.

Through the course of four months, federal agency planners worked diligently to devise a system that would allow soldiers to work in the capacity requested. A thorough review of existing legal arguments and DOD directives forced the agencies to develop

memorandums of agreements (MOAs). These MOAs became the backbone of the operation defining how the soldiers could work for the federal agency and perform duties classified as law enforcement. Detailing of the soldiers from DOD to the Department of Justice and the Department of Transportation provided the appropriate avenues to serve the federal agencies.

Operational Constraints and Limitations

All active and reserve component Army forces based in the continental United States are subordinate to Army Forces Command (FORSCOM). FORSCOM executes command and control responsibilities through the 1st and 5th Armies. Within each numbered Army there exists Training Support Brigades (TSBs) whose purpose is to mobilize citizens into soldiers. All Title 10 soldiers reported through a State Border Task Force to the TSB to the numbered Army to FORSCOM. Title 32 soldiers, on the other hand, reported to a state designated military functional area that reported to the state Adjutant General.

Title 10 soldiers processed through their TSB's. This process is designed to prepare the soldier to deploy to a theater or regional conflict. Approximately a week of military training prepared the individuals for not only a theater deployment but also for placement with a federal agency. An important part of the training itemized what the MOAs presented as expectations and limitations of soldiers in the field. The federal agencies also accomplished mission specific training.

The issue of arming soldiers for preventative measures complicated the mission to the point soldiers were soldiers reached their destination unarmed. Clearly this decision intended to lessen the rhetoric surrounding the use of federal soldiers in a law enforcement capacity. Eventually issues of personal security forced all the soldiers to train on the 9mm pistol and gave each state the discretion to physically arm its soldiers.

Averting Catastrophe in Michigan

Immediately following September 11, Michigan faced the reality of closing a border - the supply lines supporting the automotive industry severed, Detroit prepared to shut down. The Governor immediately responded and detached National Guard soldiers

to support the USCS and INS under the status of state active duty. The Adjutant General, with limited finances to support state active duty, turned to the National Guard Bureau for an alternative source of funding - Title 32 support came for fifty-five soldiers. These soldiers remained in Title 32 throughout the operation and worked directly with their Title 10 brethren. Michigan becomes a laboratory to compare and contrast the limits and benefits of one status to another.

Three concrete distinctions exist between Title 10 and Title 32: Title 32 soldiers are not covered by the Soldiers and Sailors Civil Relief Act (SSCRA), do not receive veterans status and are not subject to the PCA. To explore which status is most beneficial we examined three areas of concern: which status benefits the soldier, which provides the most effective command relationship and allows for efficient training, and finally which benefited the supported agencies. Our findings show that each status applied for different means produced acceptable outcomes, substantiating a mix of statuses is allowable in efficiently completing the mission.

Findings and Recommendations

Historical precedent exists that prescribes the reasons and situations where soldiers may operate in Title 32 status and then be automatically transferred to Title 10 as the situation evolves. The case of air defense pilots sitting alert in a Title 32 status and transferring to Title 10 simultaneously with a scramble order for a border intercept could be applied to ground troops as well.

To try and answer the “how” in providing assistance to federal agencies we developed four basic recommendations:

1. First, an exclusive exemption in the PCA for soldiers working under the Border and Transportation Security component of the Department of Homeland security would provide the legal protection for DOD personnel detailed to work in a law enforcement capacity.
2. Second, implementing a domestic PRC and utilizing TTAD's provides ample time for federal agencies to hire additional help or improve existing technologies to maintain the required alert level while imposing a one hundred and seventy-nine day limit.

3. Third, it is critical that a single MOA be written immediately to cover the transfer of soldiers from DOD to the Department of Homeland Security. This MOA should include avenues of reimbursement, command and control relationships, and the specific duties to be accomplished by the soldiers. Having a pre-signed, pre-coordinated MOA will eliminate the enormous amount of time expended in transferring personnel from one department to another. This coordination should be significantly simplified with the advent of placing the INS-ID, INS-BP, and USCS under one component of the Department of Homeland Security.

Finally, considering the new homeland security responsibilities placed on the states with subsequently minimal funding we propose amending the United States Code Title 32 to specifically state National Guard soldiers may be used for missions in support of Homeland Security. Providing such clear guidance eliminates reluctance to use this status where and when it is appropriate.

Chapter 1 Introduction - Securing our Land Borders

The Situation, September 12, 2001

Twelve hours in line. At the international ports of entry near Detroit, Michigan, each truckload of Canadian manufactured industrial parts sat waiting in line for an average of twelve hours before crossing into the United States. At the Ambassador Bridge (the border crossing into downtown Detroit), lines of idling trucks extended east into Canada for over ten miles, their drivers impatiently waiting for an opportunity to pass through the inspection site. At more lightly staffed crossings, such as those near Blaine, Washington, the wait could take up to fourteen hours. United States Customs Service (USCS) and Immigration and Naturalization Service - Inspection Division (INS-ID) officers were supplying all the manpower they could, working overtime and redistributing personnel resources, but it was not enough to ease what was a quickly becoming a sizable backlog.

All along the United States-Canadian border, the shared, institutionalized complacency that had resulted in cursory looks, superficial wave-throughs, and geographically isolated, lightly manned border crossings, with an “honor-system” barricade in the middle of the road, suddenly ended on September 11, 2001. On that day, al Qaeda terrorist attacks in the United States had caused nearly 3,000 deaths, billions of dollars in damages, and brought the nation to a halt. The USCS, the INS-ID and the Immigration and Naturalization Service - Border Patrol (INS-BP) were the federal agencies charged with border security, and they faced an immediate and overwhelming requirement to thoroughly check every person, vehicle, and commercial load crossing the border into the United States. USCS and INS-ID agents now openly regarded every person entering the United States as a potential terrorist and every vehicle entering the United States from Canada and Mexico as capable of carrying a weapon of mass destruction. Inspectors quickly became overburdened by the enormous requirements imposed on them by the implementation of Alert Level I.

Immediately after the September 11 attacks, commercial airliners were grounded or barred from entering United States airspace, international shipping was embargoed in United States ports or forced to steam off shore until their cargoes could be verified or

inspected, and the borders and land ports of entry from Canada and Mexico were closed. People all over the United States and from all walks of life faced the reality that more attacks may be only seconds away. As Americans watched the grim and weary workers in New York City frantically search for survivors, they reconciled themselves to the trauma and accepted that their lives had drastically changed. With similar perception, Americans and their government recognized that the United States borders and ports of entry could not remain closed indefinitely and that the business of the nation would continue - but under different rules, with new limitations, and by applying unaccustomed constraints. Paradoxically but predictably, the American public demanded not only increased security and a guarantee from future attacks but also a return to near pre-September 11 commerce levels.

Scope and Significance

This paper examines the deployment of over 800 National Guard soldiers to support the USCS and INS along the United States-Canada border from March to September 2002. Though nearly 1,600 soldiers actually served along both the Mexican and Canadian borders, we limited the scope of our research to the experiences of those who served in the 1st United States Army area - the northern tier of states from Maine to Minnesota. By the conclusion of the paper, it will be clear that the Department of Defense (DOD) requires discreet guidance on how to provide efficient and timely assistance to civil authorities in matters of homeland security and defense, with especial attention to those situations involving law enforcement duties. The 2002 National Strategy for Homeland Security states:

The importance of military support to civil authorities as the latter respond to threats or acts of terrorism is recognized in Presidential decision directives and legislation. Military support to civil authorities pursuant to a terrorist threat or attack may take the form of providing technical support and assistance to law enforcement; assisting in the restoration of law and order; loaning specialized equipment; and assisting in consequence management.

Even prior to September 11, the USCS and the INS managed a large daily work requirement, with agents stationed at every air, sea, and land port of entry. During the

fiscal year 2000 (FY 2000), there were over 397 million individual border crossings into the US, involving over 11 million trucks and 127 million automobiles. With new and complex security requirements, a huge backlog of air, land, and sea shipping commerce, huge overtime costs, and no reserve force of their own, the local USCS and INS-ID supervisors could see only one option - the Department of Defense. Significantly, the USCS, the INS-ID, and the INS-BP are federal law enforcement agencies, and except in explicit circumstances, DOD personnel are prohibited from providing all but the most passive support.

In particular, this paper argues that when a law enforcement role is expected or contemplated for military personnel, DOD is obligated to establish simple and clearly defined command relationships, legal underpinnings, suitable logistics support, and adequate situational training. Though DOD routinely provides support to civil authorities for a variety of functions in accordance with current policies, historical precedent and directive guidance for employing soldiers - regardless of service component - the role DOD may assume in law enforcement is fairly straightforward. During the execution of the 2002 border support mission, the lines between passive and active support to domestic law enforcement agencies by DOD became noticeably blurred. The story of that confusion and its potential impact on future military missions is one that deserves a thorough understanding by serving military personnel and civilian officials to provide appropriate responses in the future.

The DOD was the logical and only potential source for augmentation to the USCS and INS; with over 2.6 million active and reserve personnel located in all fifty states and a \$200 billion budget, it dwarfed the border security agencies in every aspect. It was the one federal department large enough to provide trained, trustworthy, drug-free, and dependable manpower. And for nearly fifteen years, the National Guard had willingly and enthusiastically provided assistance to the USCS and INS along the federal borders by committing manpower, equipment, communications assets, and other resources in support of the national and state counter-drug strategies.

The USCS and INS manpower and equipment weaknesses were apparent at the land ports of entry. However, what those agencies needed after September 11 was profoundly different from the military support they received for missions executed in the

past. The armed forces (for the most part, National Guard troops in specially-funded state service) had contributed people and equipment to perform discrete missions of surveillance and logistical support. These military members worked as part of a military unit, for their military chain of command. Now, the USCS, INS-ID, and INS-BP asked for a considerable number of individual military members to work directly under their supervision. It seemed to DOD officials that their requests were in direct contravention with one of the nation's most explicit laws regarding restrictions on the use of military force - the Posse Comitatus Act of 1878. Simultaneously, it was clear that a reluctance to contribute visibly and meaningfully to the security of the American borders was incompatible with the new national priority of homeland security. After four agonizing months, DOD determined that it would provide the support the USCS and INS requested. And by the end of the mission, over 1,000 soldiers stood on United States borders, armed and federally deputized as officers of the law.

The United States military must be able to honor future requests for support in a manner coincident to the perceived threat. This paper provides a comprehensive study of the efforts and impediments encountered in placing National Guard soldiers at the ports of entry and at the borders. In addition, the paper provides recommendations to make the process as simple as possible to relieve the confusion that exists between what the DOD can and cannot do in assisting and supporting civil authorities.

Methodology and Approach

The methodology used includes a literature survey and personal interviews with individuals who participated in the assistance to the USCS, INS-ID, and the INS-BP. A strong attempt has been made to establish the perspectives of the state military leaders, the federal military leaders, the soldiers in the field, and the agencies being supported. The paper makes it clear that this was a new mission for the DOD - no mission precedent existed and so DOD planners found themselves creating one.

The direct use of federalized soldiers by civilian law enforcement agencies was fundamentally different from all existing counter-drug programs and required a re-examination of the laws regarding employing soldiers in a law enforcement capacity. The paper considers this aspect and includes a discussion of the logic used by DOD to

determine the limits of a soldier's civil and military rights and to provide the most adequate status for their protection. In addition, the paper includes an examination of the dual status of the National Guard. This last issue may be of particular interest to members of the National Guard, since many of the participants expressed difficulty understanding the benefits of being mobilized in a federal status for duty in a local area.

The paper probes the operational employment of the soldiers and investigates the sources of frustrations and misunderstandings reported by nearly all levels of the DOD. The resulting research of the hardships associated with mobilizing and training the soldiers provides a framework for implementation in future operations. Additional research into the numerous restrictions endured by the soldiers in performing the mission will help to develop standard operating procedures for future missions.

Finally, to provide a model of how DOD can provide timely assistance to civil authorities, the paper is organized as follows:

- Chapter Two examines the existing process for mobilizing National Guard soldiers by first defining pertinent terms and providing a brief look at what it takes to activate the reserve component.
- Chapter Three explores the challenges of placing soldiers directly under the supervision of another federal agency. Examining the construction of memorandums of agreements reveals the legal and logical approach taken by DOD, the Department of Justice and the Department of Treasury.
- Chapter four outlines the constructs used to bring National Guard soldiers into various statuses that did or did not support the needs of the agencies. To validate the positive areas of the mobilization and highlight the weaknesses, the authors look at the inputs from the soldiers and agents in the field.
- Chapter Five uses the State of Michigan as a laboratory to compare and contrast the efficacy of Title 32 and Title 10 statuses in future applications.
- Chapter Six offers findings that are applicable to future missions and four specific recommendations on how to improve the process.

Sources

Research on this topic began before the mission itself concluded in September 2002. Coincident with that mission closure, DOD began planning in earnest for a major mobilization of the reserve component in anticipation of war with Iraq. As a result, the focus of many of the active and reserve component units involved in border support has been consumed by recovery from one deployment and preparation for a second. Unit-level after action reports are normally written soon after a major unit training exercise or operational deployment to capture the facts as they existed to the maximize extent possible. However, at this time, there are no official after action reports; those that do exist - even from higher headquarters levels - are perfunctory and pro forma. This is not because the units do not care about recording their experiences but rather because they are very busy preparing for their next mission; some have been mobilized already and more are destined to follow. Likewise, none of the federal departments involved (Defense, Treasury, and Justice Departments) have published official or unofficial after action reports.

Research thus centered on the aforementioned literature review and personal interviews, most of which were very productive. However, it is important to establish early that there is a good deal more to the border support story than can be included in this brief paper. In particular, the perspectives of the USCS and INS are incomplete and thus there is a substantial gap. The most important data came through other, open source material, but significantly, no serving USCS or INS representative was willing to be interviewed on the subject of this paper. And, after initial, enthusiastic indications of support, the US Army's Forces Command determined that it could not provide any direct assistance either. Thus, we feel that despite our best efforts to represent a variety of perspectives, there may be much room for improvement.

Notes

Chapter 2 The Bases for Military Involvement with Civil Authorities

The Department of Defense has a clear mission within homeland security, that of homeland defense. The DOD also has a mission to support homeland security. There is clear guidance within this mission that requires the DOD to help recover from attacks that occur. Unfortunately there is minimal guidance on DOD's supporting role to other agencies in confronting prevention, reduction, and minimization of terrorist attacks. These issues become even more complex when law enforcement activities are involved. Prior to addressing these complex and unresolved issues, an understanding of three important concepts is critical. First, the basic terms and definitions pertinent to this argument are the basis for a thorough understanding of the problem. Second, the basic structure of the DOD is essential in comprehending the expectations and importance of the Reserve Component. Finally, the types of duty under which military personnel can be called to perform are fundamental to the argument.

Definitions

DOD definitions relating to homeland security

We need to begin with a clear understanding of the subtle but critical, distinction between the concepts of homeland security and homeland defense. Homeland security encompasses the broad, concerted national effort to prevent terrorist attacks within the United States, reduce America's vulnerability to terrorism, minimize the damage and recover from attacks that do occur. Homeland defense, on the other hand, is a much more focused enterprise, dwelling on protection of U.S. territory, sovereignty, domestic population and critical infrastructure against external threats and aggression.

An important distinction between these two, for our purposes, is who leads the effort. The defense of the United States from attack by external enemies has always fallen to the military. This role, itself, is one of the pillars of the U.S. government's responsibility to provide homeland security (See Appendix A for a breakdown of DOD roles in Homeland Security). While the DOD leads the effort for homeland defense from overt military attack, it plays a supporting role to other federal agencies engaged in the

broader mission of homeland security. The National Strategy for Homeland Security outlines the responsibilities as follows:

The Department of Defense contributes to homeland security through its military missions overseas, homeland defense, and support to civil authorities. Ongoing military operations abroad have reduced the terrorist threat against the United States. There are three circumstances under which the Department would be involved in improving security at home. In extraordinary circumstances, the Department would conduct military missions such as combat air patrols or maritime defense operations. The Department would take the lead in defending the people and territory of our country supported by other agencies. Second, the Department of Defense would be involved during emergencies such as responding to an attack or to forest fires, floods, tornadoes, or other catastrophes. In these circumstances, the Department may be asked to act quickly to provide capabilities that other agencies do not have. Finally, the Department of Defense would also take part in “limited” missions where other agencies have the lead - for example, security at a special event like the Olympics.

Types of military assistance to civil authorities

The U.S. military has a long history of providing aid to civil authorities in times of crisis. The broad term for this support is “Military Assistance to Civil Authorities.” This assistance falls into one or more of four categories:

- a. Cooperation with civilian law enforcement officials. This category focuses on ongoing cooperation and support between the military and civilian (both state and federal) law enforcement authorities. This is the category best resembling the support the DOD gave to the INS and the USCS.
- b. Military assistance for civil disturbances (often referred to by its acronym of “MACDIS”). This power, which comes from statute, and allows the use of the militia or federal armed forces to quell rebellion that makes it impossible for the rest of the government to enforce law. Examples of past actions under this authority include the New York draft riots of 1863, the enforcement of school desegregation in the South in 1962, and the Los Angeles riots of 1992.
- c. Protection of key assets in the public and private national infrastructure.
- d. Emergency military support to civil authorities in case of disaster or national emergency (referred to by the acronym “MSCA”). The military frequently

uses this authority to assist in the case of natural disaster, and plans to do so in case of invasion or other attack. This authority can be used on a large scale (as it was in the wake of Hurricane Andrew in 1992) or on a smaller scale (as in the frequent case of military assistance in fighting forest fires). It can also be used, under limited circumstances, to authorize military training that provides an incidental benefit to a local community. Support to civilian law enforcement authorities is specifically *not* included within this type of assistance.

- e. Cooperation with civilian agencies to protect DOD assets from terrorism.
- f. Support to special events.(by implication) The DOD provides security and other support to the Olympic games and other like events that take place within the United States.

These types of assistance cover a broad range of contingencies. A basic understanding of them is critical to understanding the decisions DOD made in supporting the border security agencies. However, none of them provide direct guidance for the type of operation this paper examines - the direct use of military members as representatives of other federal border security agencies in support of homeland security.

Deconstructing a Monolith - The structure of the Department of Defense

In considering the assistance the Department of Defense can provide to other agencies, it helps greatly to consider its overall makeup, and the unique functions of the services' basic components. All services in the DOD (the Army, the Navy, the Marines and the Air Force) consist of two basic parts - the full-time active duty ("active component"), and the reserves (collectively known as "the reserve component"). The reserve component of the Army and the Air Force also includes the Army and Air National Guard (respectively, the ARNG and the ANG).

Simply put, the active component is the full-time Army, Navy, Marine Corps and Air Force. These soldiers, sailors, marines and airmen serve on full-time active duty. As the Department of Defense is structured under the "Total Force Policy," these active components have only limited war fighting capabilities by themselves. The reserve components supplement them to create a single, integrated force.

That supplementation comes from each services' "ready reserve." The ready reserve itself consists of two parts. At any given time, slightly over 375,000 military members serve in the individual ready reserve (commonly referred to as the IRR) - these are experienced individuals who do not actively drill and are unpaid. The balance, over 874,000 strong, serve part-time in the organized military units of the Selected Reserve. Selected Reservists are qualified, actively drilling Reservists. Soldiers in these units typically train one weekend a month and fifteen days a year. The rest of the time, they are engaged as private citizens.

The units that make up the selected reserve of the Air Force and the Army fall, again, into two categories. Some are strictly part-time units of the Army or the Air Force. The majority, however, serve in the unique, complex, and flexible status of the National Guard.

The Army National Guard is the oldest component of the Armed Forces of the United States. It traces its roots back to the organization of the first militia regiments in the Massachusetts Bay Colony in 1636. The colonists themselves drew on English military tradition by organizing their able-bodied male citizens into militias chartered to protect their fellow citizens from hostile attacks and foreign invaders.

The practice spread through the various colonies, which organized militia forces of citizens who participated in annual musters and provided their own weapons. When the colonies joined together as individual states under a Republic, they kept their militias. The federal government, preferring the concept of militias of citizens to the expense and political risk of a standing army, recognized the militia and provided for its existence, alongside a small standing Army, in the Militia Act of 1792. Through the nineteenth century, most of America's military forces came from militia forces called into federal service.

Shortly after the turn of the 20th century, the modern framework for the National Guard as we know it today came into being. While leaving the militia's traditional role as state forces in place, Congress passed laws providing for the financial support of militia units that met federal standards of training and organization. These units were also given status as reserve forces of the United States. This meant that, normally, they would serve their Governors in state militias just as their forefathers had. However, at

the direction of the President, their units would become active units of the federal armed forces, under federal command and control. These “dual status” units would become the modern National Guard.

Complexity and Flexibility-the types of military duty

Federal reserve forces serve under only one chain of command, a chain that leads up through military channels to the President of the United States. When these forces are needed, they can be brought on duty - “mobilized” - under federal authority. Federal duty, because it is defined in Title 10 of the United States Code, is often referred to as “Title 10 duty.”

National Guard units, on the other hand, normally report through a chain of command leading up through their state forces to the Governor. If the Governor decides to bring National Guard members on duty for a purely state mission, the state pays the expenses to call the soldiers to duty, and state officials command the soldiers. This status is typically referred to as “state active duty.” However, other duty performed under state authority is for military training or other duty that Congress has appropriated funds to support. In that case, the federal government provides money for pay and associated expenses of the soldiers performing duty under state authority. Because such duty is authorized under provisions of Title 32 of the United States Code, this kind of duty is commonly referred to as “Title 32 duty.” Even though the federal government pays for Title 32 duty, ultimate control over the National Guard members on duty remains with the state. Throughout the paper, state active duty and Title 32 will be collectively referred to as state service or state duty.

However, if the President determines the National Guard unit necessary for a specific mission or plan, he can “mobilize” the soldiers, putting them on active duty under the provisions of Title 10, U.S. Code. At that point, the mobilized forces are under exclusive federal control, and the state has no authority over them. The National Guard members become members of the professional standing military. Mobilized National Guard members are often referred to as “Title 10” Reservists.

The type of duty may make significant differences to military members in terms of pay, military justice, and other issues. Appendix B provides more details on the allowances, benefits, and laws specific to each type of duty.

Mobilization of reserve forces can take place under a variety of legal authorities. A summary of these authorities is listed at Appendix C. The choice of authority basically rests on two considerations: How long will the military members be needed, and can the mission be performed using volunteers? DOD directives furnish guidance on how to mobilize soldiers based on the existing situation.

For major regional conflicts and national emergencies, access to the Reserve components units and individuals through an order to active duty without their consent will be assumed. For lesser regional conflicts, domestic emergencies, and other missions, where capabilities of the Reserve components could be required, maximum considerations will be given to accessing volunteer Reserve components units and individuals before seeking authority to order members of the Reserve components to active duty without their consent.

Domestic emergencies affect the public welfare within the fifty states and possessions of the United States as a result of enemy attack, insurrection, civil disturbance, earthquake, fire, flood, or other public disaster or equivalent emergencies that endanger life and property or disrupt the Government. The events of September 11 clearly constituted a domestic emergency. In this case, the use of partial mobilization authority allowed involuntary call-up of soldiers to service. However, from Maine to Minnesota, National Guard commands managed to fill the ranks with volunteers.

Conclusion

The concepts discussed in this chapter loomed large in the decisions made about the soldiers supporting the USCS and the INS. Clear and consistent reference to the specialized terminology of this field, awareness of the structure of the DOD, and recognition of the important distinction between state duty and federal duty play critical roles in understanding the direction followed by DOD and the LFAs in this mission.

Notes

Chapter 3 ... A New Arrangement

Old and New Planning Challenges

In the years prior to 2001, military forces worked closely with civilian law enforcement agencies under complex and somewhat arcane rules shaped by political, institutional, and legal forces. These rules shared one consistent theme. Civil authorities would propose the support in the form of tasks they needed performed, and, if it could do so legally and operationally, the military would perform those tasks as a military mission under military chain of command. This time, things would be different. Planners needed to meet three challenges.

The first challenge resembled those that had come before. Some of the support now requested by the border security agencies would comfortably fit into the traditional model of military support to civil authorities. The second challenge was a new one. For the first time, the military would assign a work force of individual soldiers under direct supervision and control of a civilian agency. As if that was not enough, there was a final challenge: The LFAs were planning to utilize these soldiers to perform searches for the purposes of civilian law enforcement.

Improperly developed and executed, this mission could waste resources, expose its planners and participants to criminal liability under federal law, and set back the concept of federal agency cooperation in providing homeland security. DOD and the LFAs needed to come up with agreements that addressed all these issues and allowed them to get on with the mission.

Business as Usual - The Military as a “Contractor”

These legal restrictions, combined with Congress’ priorities, the military’s desire to help out in times of need, and the importance of uncompromised military training and readiness, have over the years led to carefully tuned policies on supporting civil authorities. Under those policies, the military usually agrees to perform a specified task for another governmental unit or agency.

Typically, the military provides that assistance under a variety of circumstances specifically authorized by Congress. Disaster relief serves as a classic example of such

assistance. Under the Stafford Act, the federal agency in charge of responding to a disaster can request military assistance to help victims. If, for example, a flood has disrupted water service, local authorities might need safe drinking water. The Federal Emergency Management Agency (FEMA) could then ask the military to assign a water purification unit to the area to do the job. The soldiers of such a unit would cooperate with local authorities, but would remain under military control. State governments follow a similar process for their units in state service, but do not require federal authorization for operations they pay for.

Operations that involve law enforcement aspects are certainly not off limits for the military, when Congress authorizes them. The best example of this is counterdrug support. Looking only at the PCA, it might seem that the surveillance and interdiction of criminals by federal military forces could pose a problem. However, the United States Code specifically designates DOD as the lead agency for cases involving the aerial or maritime transit of illegal drugs. In other aspects of counterdrug support, Congress specifically allows for limited participation with law enforcement authorities. For example, the military may not conduct operations for the sole purpose of gathering information about criminal activity, but it may pass on information that it obtains in the normal course of training. In an example of Congress' tendency to strictly control these exceptions, it prohibited direct participation by the military in any counterdrug search, seizure, arrest or like activity.

The New Road-Detailing Soldiers as “Temps”

Consider now the limitations of using a military unit to perform discrete missions. They closely resemble the distinction between an independent contractor and an employee. If the intent is to complete a defined job, and day to day control of the specific activities of those performing the job is unimportant, then a contractor can meet the need. If, on the other hand, the employer needs to control and direct the activities of those doing the work on a continuous, day-to-day basis, then a traditional employer-employee relationship works best.

Unlike task-oriented support, the military has comparatively limited experience assigning large numbers of its members to work directly for other agencies. DOD has

established processes for detailing military personnel to duty outside the Department of Defense. That guidance provides some useful rules. Military members must be uniquely qualified within the U.S. Government to perform the task, and they should only be used when they increase the effectiveness of the U. S. Government or produce more economical use of government resources. It also points out that DOD must be reimbursed for services provided to other federal agencies. Taken as a whole, DOD guidance on detailing reflects the reality that traditional details involve small numbers of military members involved with liaison duties.

Legal constraints

Military members contemplating civilian law enforcement duties must always keep the Posse Comitatus Act (PCA)⁵ in mind. The PCA is short enough to bear citation in its entirety:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a **posse comitatus** or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

Under common law tradition, the sheriff has the authority to deputize members of the community to help enforce the laws in cases of emergency. Local officials came to rely heavily upon this authority in the American South during Reconstruction. Military forces presented a tempting source of armed, disciplined men for local authorities to press into service. Congress, due to concerns about military involvement with civil authority, and unwilling to allow non-military officials to burden the armed forces with this kind of work, essentially exempted members of the United States military from any such civic duty by passing the PCA.

Over the years, exceptions to the PCA multiplied. Today, they include the operations mentioned in Chapter 2, above. Perhaps the most important exception, however, is the National Guard in state service. When serving in state service, its members are not bound by the PCA. The PCA represents to Congress much more than a quaint relic of days gone by. When it passed the Homeland Security act in 2003, Congress reiterated the importance of the PCA.

The DOD includes its own interpretations of the PCA's limitations in its published directions. DOD Directive 5525.5, the DOD's own guide to cooperation with civilian law enforcement officials, specifically allows for some forms of support to civilian law enforcement, such as sharing of useful information obtained in the course of other operations, and the monitoring of aerial or marine drug smuggling. It also contains some clear restrictions to direct assistance.⁶ In particular, it prohibits searches and seizures by members of a Federal military force, as well as any arrest, apprehension, or comparable activities.

In addition, another law presents a less-discussed, but equally important limitation on DOD activities with and for outside agencies. The Anti-Deficiency Act requires agencies to use their appropriations for the purposes designated by Congress. Therefore, as a general rule, funds appropriated for one purpose or agency may not be used by another.

The Agreement

These circumstances made deciding how to proceed with this mission complex enough. There were a variety of other considerations as well. This mission would need to accommodate all of them.

DOD and the LFAs would have to enter an agreement that met all these standards, the legal standards mentioned above, and a variety of practical issues and contingencies. Appendix E and F contain, respectively, the complete text of the MOAs with both the Customs Service and the INS. Both agreements vary considerably in phrasing and detail, but the significant terms are quite similar. Consideration of those significant terms provides valuable insight into the priorities, difficulties, and solutions DOD and the LFAs addressed as they structured their plans for providing support.

What would the mission be?

Both the INS and the Customs Service wanted help for the same primary mission: assistance in physical inspection of vehicles and other containers at United States Ports of Entry (POE). In addition, the INS agreement made it clear that the military personnel were intended to also provide a heightened security presence at the POEs.

Who would be in charge of the soldiers?

While neither MOA mentions it, both implicitly reflect the decision to use soldiers serving in Title 10 federal service instead of soldiers serving in a Title 32 status under their state chains of command. This decision gave DOD command and control over the soldiers, instead of forcing the LFAs to enter separate MOAs with 14 state governments. The soldiers were to work under the direct supervision and control of Federal law enforcement authorities, performing a Federal law enforcement mission. This solved an additional problem as well. Soldiers called into state service would have served two masters; the federal LFA and their state military chain of command. In the case of any dispute regarding the duties or working conditions of the soldiers, each state would be free to countermand guidance from the law enforcement agencies, and could even pull its soldiers out of the duty at will. Command and military justice authority would remain with the states. The law enforcement authorities could not *direct* these soldiers to do anything. They could only *request*.

The troops already serving in Title 32 status in Michigan would continue to serve in that status. For reasons not apparent from the records, they were never converted to Title 10 duty. All the others, however, would serve as Title 10 soldiers.

This course would, however, create a significant problem in and of itself. Military members serving in state status would not have to worry about the PCA, but soldiers in Title 10 would have to comply with its provisions. The memoranda of agreement set out to solve this problem in two ways; one for military personnel who would not be performing law enforcement duties, and another for those who would perform inspections and provide security.

The first group including those military personnel who would provide support that did not rise to the level of law enforcement, would remain under the control of DOD. This included soldiers who would serve in INS Border Patrol intelligence centers would be advising Border Patrol agents on setting up and operating tactical operations centers. It also included soldiers who flew and maintained military helicopters supporting the Border Patrol. They would be limited to carrying Border Patrol agents who would observe the border from the aircraft, providing transportation and communications assistance, and providing an “aerial presence” to dissuade unauthorized border crossing. None of these soldiers would participate directly in search, seizure, or arrest operations. Therefore, they could remain under DOD control without worry about a PCA violation.

The second group-the soldiers who would be conducting “inspections” and providing security assistance along the border-presented more of a challenge. Their direct support of law enforcement officers raised the possibility of a PCA violation, and went against the DOD’s own guidance.

The MOAs sought to resolve this problem by removing this second group of soldiers from the coverage of the PCA. By turning the soldiers over to the command of the LFAs, they hoped to rely on historical precedent. In 1966, Congress had authorized the detailing of military members to the Department of Transportation. In 1970, in response to the hijackings of American airliners, the question came up of whether such detailed military members could be deputized as sky marshals. Assistant Attorney General (and later Supreme Court Justice) Rehnquist issued an opinion that this would not violate PCA. The statute, in allowing the detailing to the Department of Transportation, specifically required military members work under civilian command, perform civilian duties, and in every way save pay grade and allowances serve as civilian employees. Therefore, he reasoned, Congress did not intend for them to be constrained by the PCA.

While a similar descendant of this law still exists, it still pertains only to the Department of Transportation. At LFAst an argument could be made that Congress had reviewed and approved of the concept that soldiers out of the control of DOD do not act as part of the Army. Under the press of circumstances, the DOD went with that argument.

Detailing, however, was more than a way to create legal protections for the soldiers. It was the heart of the effective working relationship between the soldiers and the LFAs. On a scale never seen before, soldiers would temporarily fill employee vacancies under the command and control of a non-military agency. They would be wearing military uniforms, but they would be temporarily assume roles as officials of a federal civilian security agency.

DOD leadership had assembled a patchwork quilt of duty status and capabilities to get the job done. In the process, they had also created a tremendous laboratory for evaluating the strengths and weaknesses of the each category. The state-controlled Title 32 Guardsmen at the Michigan border, their Title 10 compatriots detailed to the civilian agencies, and the Title 10 aviators flying under military command and control overhead waited to test their new roles.

Duration of the Agreement

The duration of this agreement generated sensitive issues for all parties. Both the DOD and the LFAs intended for this to be a temporary arrangement. From an administrative perspective, DOD could mobilize soldiers for up to 179 days without adding them to the statutory caps for active duty military personnel. More importantly, however, a strict, non-negotiable end date to the support would help ensure that it would truly be temporary. The LFAs also had policy reasons to limit the duration of the program. They intended it as a temporary measure to allow them to hire new agents. Importantly, it also allowed them to reassure Mexican and Canadian authorities that the program was not part of any larger effort to militarize the borders.

Protecting DOD's interests

In its most fundamental sense, this was an agreement by DOD to loan an asset (its troops) to the LFAs. Like any loan of a valuable asset, the terms of this loan needed to include protections for the lender. Toward this end, the MOAs contained several significant provisions. First, both agreements made it clear that the supported LFAs would reimburse DOD for expenses relating to the support. This protected DOD budgets, but had a more important purpose. Since the LFAs had their own

appropriations, it would have been illegal to use regular DOD money to perform their missions. The MOAs specified training for the soldiers involved to do their jobs safely and effectively. Soldiers would work a standard forty-hour week, with the chance to take leave as required. The parties also agreed that the soldiers providing assistance would be unarmed. Finally, the MOAs allowed for termination by either party on 30 days notice.

A Long Time Coming

The requests for assistance went to DOD in October 2001. Addressing all the new issues involved in reaching a memorandum of agreement, and obtaining the necessary approvals, delay signature of the MOAs and the beginning of training until March 2002. In the meantime, the over-stressed border security agencies received no assistance. While the Title 32 National Guard soldiers had been at their posts for months, DOD still had to implement the MOAs and deliver the soldiers.

Notes

Chapter 4 ... Operational Constraints and Limitations

From March to September 2002, National Guard forces helped secure the nation's borders in all but two border-states (Idaho and New Hampshire). Guardsmen responded on the borders only after it was determined that the responsible federal agencies could not handle increased security requirements and needed to hire and train new agents, and that using military support would allow that process to occur.

The chapter covers four aspects of the mission as experienced in the 1st United States Army area of operations. First, we will develop the command relationships that were implemented between the DOD and the INS and USCS (the lead federal agencies or LFAs) to accomplish the mission. Next, we will examine mobilization and training under Title 10, US Code and discuss alternative mobilization possibilities, especially that of Title 32, US Code. We examine some issues involving training - who did it, what were the tasks, conditions, and standards, and who certified the soldiers once they completed their training. The decision to arm the mobilizing Guardsmen was very complicated and confusing, so we have devoted a section of this chapter to that. Next, we will attempt to achieve an understanding of the constraints and limitations on duties performed by the detailed soldiers, their bases, and the impact on mission accomplishment. Finally, we will integrate the results of the mission to determine what should remain as part of the template for future missions of this type.

Command Relationships

All conventional active and reserve US Army forces based in the continental United States are subordinate to US Army Forces Command (FORSCOM), a four star General officer headquarters based at Fort McPherson, Georgia. FORSCOM executes its command and administrative responsibilities for reserve component units through the 1st and 5th US Armies (commonly referred to as "CONUSA," for Continental US Army), which are based at Fort Gillem, Georgia and Fort Sam Houston, Texas. The two CONUSAs collectively share responsibility for mobilizing, training, and deploying all Army Reserve and National Guard units and soldiers in the United States. The 1st

CONUSA is responsible for the eastern half of the country while the 5th CONUSA is responsible for the western half (See Figure 4-1).

Figure 4-1: First U.S. Army Area of Operations

Figure 4-1: First US Army Area Of Operations

1st CONUSA, headquartered at Fort Gillem, Georgia, is a multi-component organization commanded by an active duty Army lieutenant general. Officers and enlisted soldiers come from the active Army, Army Reserve, and Army National Guard serving three-year active duty assignments. Occasionally and during times of crisis, additional reserve component soldiers supplement each of the staff elements. 1st CONUSA units provide training support to Army Reserve and Army National Guard units in its 27-state area of responsibility through three Training Support Divisions and their fourteen subordinate Training Support Brigades (TSBs). The TSBs provide training support and, on order, deploy mobilized units through mobilization assistance teams. When performing domestic support or disaster relief missions, the TSB Commander assumes the role of the Defense Coordinating Officer (DCO) for Military Support to Civil Authorities (MSCA) operations within a specific geographic area that may cross state borders. Thus, the three essential functions of 1st CONUSA are: training support,

mobilization support, and MSCA. 1st CONUSA's area of responsibility includes approximately two-thirds of all US reserve component units (USAR and ARNG). FORSCOM assigned 1st CONUSA the mission to provide military support to the INS-BP.

CONUSAs are responsible for planning for and responding to disasters in all of the forty-eight contiguous United States. As headquarters for the DOD executive agent, CONUSAs provide policy, guidance and direction to Army forces responding during disaster response and other domestic relief situations. To execute this mission efficiently and effectively, the CONUSA staff maintains close and continuous coordination with state Offices of Emergency Services (OES), State Adjutant Generals (TAGs), and the Federal Emergency Management Agency (FEMA).

1st CONUSA includes three subordinate Training Support Divisions - the 78th, headquartered in Arlington Heights, Illinois, the 85th, headquartered in Birmingham, Alabama, and the 87th, headquartered in Edison, New Jersey. These three divisions, components of the US Army Reserve, are composed of four or five TSBs. The mission of the TSB is to conduct small unit collective training, computerized battle simulation exercises, and to assist and evaluate designated priority Army Reserve and National Guard units during pre- and post-mobilization. Each brigade is a tri-component organization (active, reserve, and National Guard personnel) and provides mobilization training teams, mobilization support, and military support to civil authorities. 1st CONUSA designated the 2d Brigade, 85th Division, and the 2d Brigade, 78th Division as its lead elements for coordinating support for the duration of the border support mission. Specifically, the two brigades provided and synchronized training support, deployed Defense Coordinating Officers (DCOs) to coordinate military support, and provided a command and control headquarters for deployed units. In both cases, the brigade commander served as the DCO.

1st CONUSA developed a complex but ultimately functional system for exercising command, control, and coordination functions for soldiers deployed in support of the border security mission (Figure 4-2). The critical components of the chain were the ad hoc organizations referred to as the State Border Task Force (SBTF).

To accomplish the mission effectively, 1st CONUSA created three types of detachments. All consisted of National Guard soldiers mobilized in a Title 10 status. The first detachment of Guardsmen was detailed to the INS-ID. The second was detailed to the United States Customs Service (USCS). The conditions of their detail -- to support federal law enforcement agencies -- caused the Army and DOD to agree to relinquish operational control over these two detachments. Though the DOD routinely details its service members to other federal agencies, including the Justice Department and Drug Enforcement Agency, only rarely had it detailed serving soldiers for the purpose of *performing* law enforcement tasks. In fact, DOD was very concerned about the legal status of any detailed soldiers, having been subjected to significant negative publicity for being involved in several high profile cases where it appeared that military forces had or might have been involved in inappropriate and illegal acts that led to the deaths of US citizens. Thus, DOD was particularly focused on getting the legal and operational status of detailed soldiers precisely correct. The third detachment, which provided support to the Border Patrol division of the INS, was not detailed but remained under DOD control throughout the operation.

The SBTF provided administrative control and support to each of the three types of detachments. FORSCOM instructions mandated that any state conducting flight operations be commanded by an aviation rated lieutenant colonel. In turn, each of the detachments provided periodic reports. These were important, not only for accountability of personnel and equipment, but also for tracking expenses for reimbursable funding. Each detachment detailed to the INS-ID and USCS were under the operational control of their supported agency. Explicit language contained in FORSCOM orders left little doubt as to who was in charge:

No member of the United States Armed Forces while performing duties under detail to INS-ID will be subject to the direct or indirect command of DOD or of any officer thereof regarding the performance of their INS-ID duties until the detail is terminated. DOD will retain administrative control and provide administrative assistance and logistical support for DOD personnel detailed to the INS-ID.

In addition, the SBTF provided both administrative support and operational control to the four aviation detachments supporting the Border Patrol (INS-BP) division of the INS. These detachments were from the Reconnaissance and Aerial Interdiction Detachments (RAID) that routinely supported state counterdrug efforts. Commanded by a captain and consisting of one OH-58 helicopter, several pilots and the ground crew, they were located in Maine, Vermont, New York, and Michigan. They also included a small number of soldiers to work in the eight INS-BP sector intelligence centers. In accordance with standing operating procedures, each of the RAID detachments had coordinating relationships with each of the state aviation officers.

The aviation detachments operated under strict guidelines and were restricted to five support missions:

- Observation of border infiltration sites
- Transporting INS-BP agents to respond to “unmanned” sensor alerts
- Providing an airborne command and control capability for INS-BP agents
- Providing communications between the INS-BP and other civilian law enforcement agencies
- Providing an aerial presence that dissuades unauthorized border crossing

In the conduct of their duties, pilots could and were directed to report suspicious activity when they detected it, but they could not deviate from their approved flight plan to keep a vehicle or person under observation, even if they observed a crime in progress. They could neither interdict any vehicle nor conduct searches or seizures. They could not hover and maintain surveillance, nor could they deviate and pursue a suspect, block ingress or egress routes of suspects. They could not target vehicles, vessels, or persons, and were expressly forbidden to use their infrared sights against buildings or maintain any building under surveillance. Significantly, members of the INS-BP aviation detachments were expressly and explicitly prohibited from participating in any counter drug operations being conducted by National Guard soldiers in a Title 32 status.

In accordance with the memoranda of agreement, each aircraft was restricted to four hours’ flight time per day. Each flight carried an INS-BP officer as an observer, and each mission to be performed in support of INS-BP had to be validated and approved by the SBTF commander.

The handful of soldiers working in what were termed sector intelligence centers were also subject to specific restrictions in accordance with the Posse Comitatus Act and Executive Order 12333 United States Intelligence Activities, which restrict the dissemination and use of intelligence collected in connection with military support to civilian law enforcement. Specifically, these soldiers could not:

- Collect or analyze intelligence data on any US citizen
- Retain or disseminate intelligence data on any US citizen
- Conduct foreign intelligence or counterintelligence activities
- Conduct search and seizure
- Arrest, apprehend, stop, frisk, or similar activity
- Conduct surveillance or pursue individuals, vehicles or vessels
- Act as undercover agents, informants, investigators, or interrogators

Soldiers involved in the aviation support and sector intelligence center missions were not armed - but under the Rules of Force in place for this mission, had the right and obligation for their own self-defense.

The SBTFs were assigned to the two TSBs and reported directly to them. They also coordinated directly with the INS-ID and USCS headquarters located in each state and with the Senior Army Advisor, Army National Guard (SRAAG). To assist reporting and accountability, the TSBs established a liaison section with each of the SBTFs. In turn, the TSBs reported both to their assigned division headquarters and directly to 1st CONUSA. As necessary, they also coordinated with each other, though this was generally limited to a sharing of ideas, techniques and procedures.

1st CONUSA exercised operational control of the two training and support divisions and coordinated for external support through the SRAAGs with each of the affected state Adjutant Generals. This relationship was critical to the success of the mission, since the SBTFs were supported by the states in which they were located, and because all of the mobilized National Guard units were not necessarily from the states in which they operated. For example, the Pennsylvania National Guard provided aviation support in New York. This support arrangement was unusual; normally, National Guard soldiers mobilized in a Title 10 status were supported in the same ways as their active military counterparts - through federal support facilities and with federal funding codes.

Figure 4-2: Command Relationships

DOD created a new and complex command relationship for the border support mission and drew a new organizational chart (Figure 4-2). This chart showed the participants graphically how it was possible for DOD to detail federal troops to perform duties as federal law enforcement officers and agents. National Guard soldiers operating under Title 10 were administratively and technically separated from a traditional military chain of command in order to facilitate accomplishment of their mission. Ironically, it was because they were officially detailed away from the Army they had been activated to serve that they were able to perform the duties they were assigned and thus accomplish their mission.

Mobilization and Training

1st CONUSA conducted a centralized mobilization for its Guardsmen at two sites: Fort McCoy, Wisconsin, and Fort Drum, New York, where 2nd Brigade, 85th Infantry Division (TSB) and the 2nd Brigade, 78th Infantry Division (TSB) supervised the process and assumed command of the five SBTs. Guided by memorandums of agreement with the appropriate federal agencies, the two TSBs mobilized, trained, and deployed 388 personnel and four OH-58A scout helicopters to border sites in Maine, Vermont, New York, Michigan, and Minnesota.

1st CONUSA envisioned and designed a mobilization process to last a maximum of twenty days, beginning with official notification of the Guardsmen and ending with their arrival at their place of duty on the federal border. Soldiers were mobilized for 179 days and ordered to complete a Temporary Change of Station (TCS). Guardsmen being mobilized were required to meet standard military deployment requirements as specified in Army Regulation 600-8-101.

The State National Guard Headquarters had anticipated a mobilization for several months. Shortly after September 11, 2001 it became clear that the federal borders needed increased manpower and technical upgrades to properly meet the elevated security needs. For example, in Michigan, the impact of closing the border with Canada was immediate;

so many United States manufacturing plants relied on imported parts from Canada that their assembly lines were virtually halted, creating ever-increasing delays on goods intended for delivery within in the United States and abroad. Thus, the various state National Guard headquarters anticipated an additional manpower levy to support either a state or federal requirement. They contacted their associated supporting organizations, sought guidance from higher headquarters, and began a simultaneous planning process with 1st CONUSA and the TSBs. Though firm decisions were somewhat slow in coming, approximate numbers of personnel required and likely units were identified. By mid-January 2002, the decisions to mobilize had been made. As soon as the pending decisions on the legal and administrative status were finalized, mobilization orders would be issued.

Mobilizing an Army National Guard unit is often an intensive process requiring much longer than an active unit of comparable size, and with good reason. Active units are maintained to be *ready now*; reserve units are maintained *to be ready to be ready*. Most National Guard units conducted pre-mobilization screening at their state military facilities prior to moving to the designated mobilization stations in New York and Wisconsin to make their experience at the mobilization station proceed more smoothly. The commanders of these units screened their soldiers and mobilized only those who could meet the demands of a lengthy deployment away from home.

Despite their attempts to anticipate requirements, mobilization was not without problems. Not all National Guard units could or did maintain a database of their members' deployment statuses, causing confusion and reducing the effectiveness of the pre-mobilization efforts even further. Similarly, the two mobilization stations only had limited historical and statistical information to allow them to anticipate fully the needs of the soldiers from outside their normal service area. They had no way to anticipate the number of soldiers that would require dental work, legal assistance, clothing and equipment issue, or other needs. Some soldiers were released from their orders because their deployment needs exceeded the capacity of the mobilization station to meet them. For example, soldiers who required dental work too extensive to be completed during the few days allocated for the mobilization process were released from their mobilization orders and replaced.

According to some of the Guardsmen who deployed to the border, one of the major problems that arose during the mobilization process was the lack of adequate logistical support, including information technology (IT) and administrative support. Even in retrospect, it is hard to rationalize the amount of IT requested, which included several desktop and laptop computers, printers, copiers, facsimile machines, and cellular telephones. The majority of soldiers were assigned to working border stations that already were equipped with a variety of IT equipment. The exceptions were the State Border Task Force headquarters and the aviation sections, which from the outset were provided office space but little equipment. As events progressed, the office equipment arrived, though generally not quickly enough for those using it. Other complaints arose from confusion surrounding transportation to and from the mobilization station, availability of administrative equipment at the various ports of entry and duty locations along the border, and logistics support contracts, especially those in support of aviation elements. It is important to note that during the months preceding deployment, DOD had reached an agreement with the Justice and Treasury departments concerning funding and reimbursement.

Soldiers conducted three types of training for this mission. Prior to activation and detailing, each had to be qualified in his/her military occupational specialty. This ensured that all of the soldiers who participated had at least been through basic and advanced individual training and were capable of following orders and performing basic military tasks. Most of the Guardsmen had conducted weeks and months of military training as members of their units; so militarily oriented training, eight hours in length, was composed of:

- Level I Anti-Terrorism/ Force Protection Training (2 Hours)
- Media Awareness Training (1 Hour)
- Legal Constraints Training (1 Hour)
- First Aid (3 Hours)
- Rules for the Use of Force (1 Hour)

Second, FORSCOM directed two days of mandatory training for each soldier to occur during the mobilization process (See Figure 4-3). Third, LFAs conducted two days

of mission specific training and refresher and reinforcement training periodically during the deployment. In general, the quality of training conducted by LFAs varied by agency.

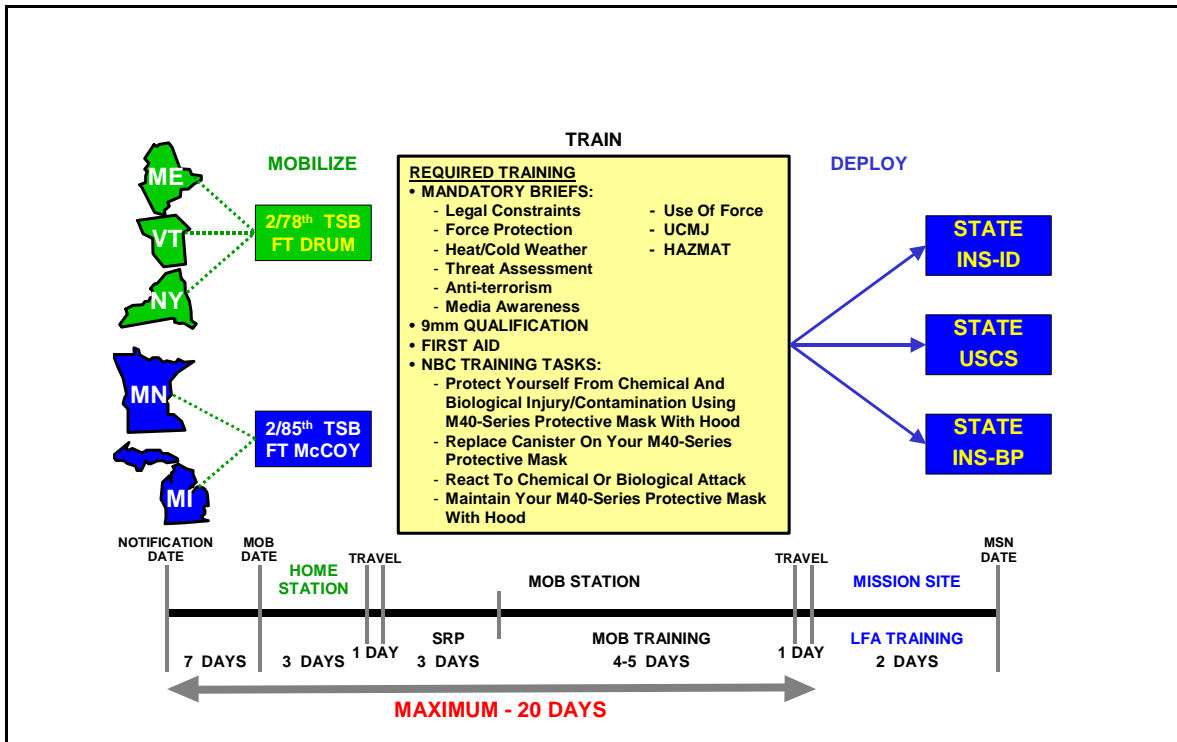


Figure 4-3: Planned 1st CONUSA Mobilization Timeline and Critical Training Tasks

Legal constraints training was expected to cover the definition of “detail” and the duties and responsibilities of soldiers detailed to civilian supervisors, implications and constraints of the Posse Comitatus Act, command relationships, and the chain of command.

Once the Guardsmen arrived at their duty stations along the border, each received practical training from their supervisors and fellow workers on site. Those personnel detailed to the INS-ID learned the conduct of port-of-entry (POE) security, vehicle inspection, and traffic management. Those detailed to the USCS received the same training as their counterparts working for INS-ID and also on physical inspection techniques for commercial and passenger vehicles. Guardsmen supporting INS-BP (aviation and sector intelligence center personnel) received only an orientation to their duties or operational area, but no additional mandatory training.

Throughout most of the planning process, FORSCOM and 1st CONUSA assumed that all of the deploying soldiers would be armed. The US had come under attack and

there were repeated warnings and alerts about future assaults on the homeland from DOD, the Department of State, FBI, and other agencies charged with protecting the public. Each deploying Guardsman was to train, qualify on, and be issued the 9mm government-issue pistols. They were also to train, be certified, and be issued nuclear, chemical, and biological (NBC) protective equipment. Both of these tasks, which required several hours of hands-on training and were standard force protection considerations, were dropped from the list of required training. Mobilized Guardsmen thus reached their duty stations unarmed and without having trained or drawn NBC equipment.

Arming

The subject of arming the detailed soldiers was complex and ultimately confusing to almost everyone involved. In many ways the decision process itself came to symbolize the overall difficulties of planning and executing the border support mission. When FORSCOM began its analysis of the border support mission, one of the initial expectations and assumptions made by planners was that the detailed Guardsmen would be armed. After all (the planners reasoned), President Bush had declared the nation at war with terrorism and terrorist cells suspected of operating out of reach of law enforcement could gain access to the US by crossing a land border. The planners knew that thousands of vehicles crossed from Canada and Mexico each day, and that the federal law enforcement agents on the border were armed for their own protection. Also, Guardsmen performing security missions in the nation's airports were armed (though they were not issued ammunition). All logic pointed in the direction of arming the Guardsmen supplementing the border security forces. Some states took the initiative and qualified their Guardsmen on the standard issue 9mm pistol prior to them reporting to the mobilization station. Despite the apparent logic, DOD policy assessments determined the opposite - soldiers on duty along the US borders would not be armed. It was an additional complication in an already complicated mission.

To understand the initial DOD position more fully, one should be familiar with the controversial Esequiel Hernandez, Jr. case. Hernandez was a civilian goatherd who was shot and killed by US marines performing an anti-narcotics mission along the

US-Mexican border on May 20, 1997. The marines, who suspected Hernandez was a drug smuggler, claimed Hernandez shot at them and that they shot in self-defense. Though they were ultimately exonerated of any wrong doing, the incident caused significant public outcry about the use of active duty forces in a law enforcement role. It also forced DOD to reconsider and further define what constituted expected and acceptable levels of training and supervision. Until resolution of the case, DOD temporarily suspended deployments of military forces along the border. In addition, the Department of Justice had tried to coax overt DOD involvement in its assault on the Branch Davidian complex in April 1993. With these issues very much in the minds of DOD attorneys, the recommendation of the DOD General Counsel in January 2002 was to leave the deployed Guardsmen unarmed.

The decision to not arm surprised the FORSCOM and 1st CONUSA planners, the state Adjutants General, and the soldiers involved. To the commanders and staff officers, such a position seemed counterintuitive. Here were soldiers - who were *expected* to be armed when defending the nation and protecting its citizens and interests - who would be the ones requiring protection. The FORSCOM position underscored the irony of the situation, since soldiers were required to attend training in INS-ID and USCS rules of force but denied the use of any weapon in self-defense. The Guardsmen remained unarmed from assumption of the mission until June 2002, when FORSCOM abruptly ordered all personnel detailed to the INS-ID and the USCS to undergo weapons training and qualification with the 9mm pistol and issued pistols and ammunition.

Many officers in the National Guard and 1st CONUSA felt the FORSCOM reversal was the direct result of a collective, personal intervention by the state Adjutants General. On February 25, 2002, three days after FORSCOM issued its execution order - which included the directive not to arm detailed soldiers - the fifty-four State Adjutants-General took the unusual step of making a direct appeal and agreed to send a joint proclamation to President George W. Bush. The thrust of the document was that the US would be better served if the National Guard soldiers were mobilized in a Title 32 status and under state control, similar to the Guardsmen serving in the nation's airports. It also bluntly pointed out that Guardsmen mobilized in a federal status in support of law enforcement agencies would be unarmed:

“Whereas orders issued by DOD on or about 22 February 2002 direct that Army National Guard soldiers be federalized for border security missions on or about March 4, 2002. Such orders require junior enlisted personnel to perform law enforcement duties without any officer supervision and require them to perform potentially dangerous security duties unarmed and without appropriate means of self-defense or self-protection;”

FORSCOM never offered any written rationale for changing the policy, opting instead to issue an order containing an announcement of the change in status from unarmed to armed and directing additional weapons training:

“ The initial mission analysis showed that DOD personnel would not be in a position or be required to perform a task that required the use of lethal or non-lethal force. Additionally, the lead federal agencies took on the responsibility of providing force protection for our people.”

To ensure uniform weapons training, qualification, and understanding of the rules of force (RUF) governing federal law enforcement agents, each of the affected soldiers returned to their mobilization station for three days in June 2002. Each of the 315 Guardsmen qualified on the 9mm pistol and attended a full day of RUF training conducted by the appropriate law enforcement agency - even those that had taken the initiative to qualify prior to deployment. Even so, the prerogative of the senior agent at the border crossing point retained the authority to disallow the soldiers to carry side arms while on duty.

No specific condition or reason was ever stated by FORSCOM for its reversal. First, the decision to arm was selective and did not affect all soldiers. None of those personnel working at the various SBTF headquarters, for the INS-BP, or in Michigan - regardless which agency the soldiers worked for -- were armed. Second, Guardsmen working for INS-ID in Maine, Vermont, and New York were armed; those in Minnesota were not. Lastly, soldiers working for the USCS also received training in and were armed with oleoresin capsicum pepper spray.

Weapons safety and adherence to the rules of force remained concerns throughout the mission, especially because civilian law enforcement agencies routinely carry weapons loaded and with a round chambered. The rules of force adhered to by law

enforcement agencies require that they be prepared for contingencies and conditions that shift from benign to deadly and back to benign very rapidly. Police and other lawmen carry loaded weapons as part of their daily business culture. When soldiers carry loaded weapons, they expect to be engaged in combat - the conditions in which they operate is known to be deadly. Thus, when the soldiers were armed, they had to make a significant psychological and cultural shift, something their military training did not address.

To make the situation easier to understand and to allow the soldiers to carry loaded weapons legally, their status as border agents had to be made official. Each of the soldiers working for the INS-BP were deputized by the US Marshals Service in accordance with 8 US Code. In similar fashion, the USCS designated each of the soldiers detailed to their organization as Customs Officers in accordance with 19 US Code. Ironically, these soldiers were now officially deputized officers of the law - precisely what the Posse Comitatus Act of 1878 had been enacted to prevent.

Issues of physical security and accountability of the weapons and ammunition arose. The US military, including the National Guard, issues ball ammunition for training, qualification, and combat. Standard issue for the INS-ID and USCS is hollow-point ammunition. Thus, military forces had to draw, transport, and secure weapons and ammunition from a military base, then adhere to DOD requirements for security and accountability, something the civilian agencies were less concerned with, because as law enforcement officers, they transport their weapons in personal vehicles and take them home at the end of their work shifts. Soldiers assigned weapons were issued holsters, cleaning kits, magazines, and an operational load of twenty rounds of 9mm ball ammunition. DOD rules regarding the proper transport and security are necessarily rigid; thus, each of the weapons and all of the ammunition was issued at the soldiers' duty stations - the forty-nine ports of entry where they were detailed to serve.

A related issue of force protection was the decision not to issue body armor to the soldiers supporting INS-ID and USCS. Like many local and state policemen, INS-ID and USCS agents routinely wore body armor as part of their daily uniform. Soldiers likewise wear body armor when deployed to hostile fire areas and routinely train with it, despite the relative discomfort of wearing a heavy, cumbersome vest. Somewhat surprisingly, the National Guard soldiers were not issued body armor because no risk assessment

called for it, at any level of command, either before or after the decision to arm. In retrospect, the decision not to issue or mandate wearing body armor seems an unnecessary concession to personal comfort, especially after some of the Guardsmen were involved in the apprehension of large amounts of drugs discovered during routine inspections.

Conclusion

In this chapter, we have addressed four distinct aspects of the mission. The 1st CONUSA experiences along the northern border of the United States were marked by a complex command relationships and supporting administrative chains that worked because the personnel involved went to great lengths to ensure that obstacles and impediments to success were bypassed or overcome. 1st CONUSA and its partners, the INS and USCS, forged effective working relationships on the local and regional levels that resulted in a return to nearly pre-September 11 rates of trans-border commerce and tourism. Mobilizing the soldiers caused some inconveniences to the soldiers, but these were largely minor, thanks to the amount of work done prior to the call to active duty. It is clear that mobilizing closer to home might have eased the impact on the soldiers and their families, but it would have incurred additional costs and changes to standing operating procedures that would have further delayed mission accomplishment. Because unit commanders called for volunteers, they were able to be selective in who was mobilized; the soldiers who were called up were expected to meet certain levels of training and have some experience. They were expected to be technically proficient and not need much in the way of additional training - what training they did require and needed certified on could only be provided by the agencies they went to serve. It is clear that every detailed soldier had attained a level of training appropriate to his role in the mission. Similarly, we have seen that a controversy surrounded the decision to arm the soldiers. Once the decision to arm was made, however, the only way for soldiers to carry weapons legally was to become officers of the law. Thus, the decision to arm the mobilized soldiers was not only very complicated and confusing; it set the precedent the DOD had deliberately wanted to avoid.

Thus, with regard to command relationships, mobilization, training, and arming, it is apparent that DOD must establish a clear guidance on how to provide efficient and timely assistance to civil authorities in matters of homeland security and defense.

Notes

Chapter 5 ... Averting Catastrophe in Michigan

During the autumn of 2001, DOD analyzed the Treasury and Justice Departments' requests for support and painstakingly established a legal argument with various courses of action to justify the appropriate response. The issues were very complex, the stakes correspondingly high, and as has been noted, there was no successful, valid precedent from which to draw lessons learned. The DOD response to the Treasury and Justice Departments' requests took more time than leaders and managers in either department had expected. The planning and execution of combat operations in Afghanistan competed for top priority with the demand for increased homeland defense.

The lack of time available to analyze the problem and determine a response frustrated officials in the fourteen border-states; each state derives a large amount of revenue as a result of the traffic that crosses into and out of the United States each day. In particular, the impact of border closure had an immediate negative effect on the mammoth industrial complexes that operate in the north and mid-western United States. Multinational business conglomerates like General Motors and Ford Motor Company operated industrial plants on both sides of the United States - Canada border and had depended on integrated production schedules since 1908. By 2001, the cross-border economies were so dependent on one another that any serious interruption of industrial production risked regional economic catastrophe.

This chapter examines the unique approach the State of Michigan took to lessen the impact of the border closure on the economies of the border-states and the rest of the United States. It also threatened the Canadian economy, particularly the province of Ontario. Michigan state authorities thought the consequences in their state were so serious that they felt compelled to act immediately. Without waiting for resources or quantified support from federal agencies, including DOD, fifty-five Michigan National Guard soldiers arrived at ground ports of entry into Michigan and began assisting USCS and INS officers less than a week after September 11. Then, five months later, more National Guardsmen - this time in a *federal* status - arrived at the border crossing sites. Until the mission ended in September 2002, all of the National Guardsmen worked side-by-side, without regard to their mobilization status. This difference in status was not just

an academic distinction - there were differences in command relationships, operational execution, benefits and legal status. Further, it caused confusion for the USCS and INS-ID. Though all agencies involved worked through their challenges in an admirable fashion and achieved mission success, it is clear that the situation in Michigan was more complex than in other states. The experiences and lessons learned allow future leaders and planners to compare and contrast two distinct approaches taken to accomplish the same mission - military support to civil authorities - within the same operational area.

Operational Considerations

With nineteen vehicle assembly plants, dozens of power train, stamping and component plants, more than seven hundred parts suppliers and more than twenty-three percent of total United States car and truck production, Michigan is indisputably the global center of automotive manufacturing. If one considers the large numbers of nearby Canadian plants and their interdependency with Michigan industry, the negative impact of border closure on the local and national economies is obvious. There are three main ground ports of entry into the state; Detroit - the Ambassador Bridge; Port Huron - the Blue Water Bridge; and Sault Ste. Marie - the International Bridge. National Guard soldiers from Michigan augmented the USCS and the INS-ID at all three of these ports of entry.

With cross-border traffic flow stopped after the attacks of September 11, Detroit auto manufacturers immediately felt the impact and made the situation known to Michigan Governor John Engler, telling him, "If the auto manufacturing supply conduit continues to trickle, we'll have to begin to shutdown some of our plants." Late on September 12, Governor Engler directed the State Adjutant General, Major General E. Gordon Stumpf, to supplement the USCS and INS-ID offices with National Guard personnel. On September 14, the fifty-five National Guard soldiers began their service on state active duty. The State of Michigan had a limited budget, and General Stumpf anxiously sought a change of status to Title 32, which passes on most expenditures to the federal government. In less than thirty days, the soldiers converted to Title 32 status, which increased their benefits and eased the financial burden on the state treasury. The

National Guard presence served the dual purpose of improving border security and easing the commercial backlog.

Figure 5-1, Michigan: Major Population Centers and Highways

Significantly, Michigan was not directly financially reimbursed for any of the support it volunteered to the USCS or the INS. The support was organized on an ad hoc basis, designed to keep cross-border traffic lanes open and enhance security by providing a visual signal that the border security had been tightened. The working relationship was very collegial and complementary.

On September 12, leaders assigned to the 177th Military Police (MP) Brigade, Michigan Army National Guard, called for volunteers and quickly found enough personnel with training and experience in customs operations, use of deadly force, and search and seizure. These personnel were easily transitioned to state active duty after participating in mandatory refresher training. The first National Guard soldiers arrived on the border on September 14, and by September 18, all fifty-five soldiers were mobilized and on station. To limit transportation, lodging, and other costs, National Guard leaders used as many local based soldiers as possible.

Michigan National Guard officials soon recognized that MP units might be among the first to be called to federal duty if the United States expanded its combat operations against Taliban and al Qaeda terrorists in Afghanistan. Prudently, they expanded their training and gradually replaced the MPs with volunteers from infantry and field artillery units, though there were never supposed to be more than fifty-five soldiers on Title 32 active duty. These soldiers remained in a Title 32 status throughout the mission and worked side by side with their Title 10 brothers without arms.

The Title 32 Guardsmen worked for the Michigan Governor through the state Adjutant General in support of the USCS and INS-ID, not for the agencies themselves. They worked closely with the USCS and INS-ID building on the strong support relationships the state had developed during the on-going counter-drug effort.

By contrast, the arrival in March 2002 of eighty-one federalized National Guardsmen changed working dynamics for civilian management and National Guard commanders alike. For the USCS and INS-ID, the additional eighty-one soldiers more than doubled the additional manpower and provided a more visible deterrent - something the civilian agencies viewed very favorably. The Title 10 soldiers also were detailed to the USCS and INS-ID, meaning that the federal agencies could exercise direct authority over them, something they could not do with Title 32 soldiers. The additional eighty-one

soldiers increased the number of soldiers on the Michigan border to 136 - finally, the USCS and INS-ID could devote what they viewed as an appropriate amount of attention to inspections.

For five months, the USCS, INS-ID, INS-BP, and National Guard soldiers in Michigan had worked together, gaining shared experience and familiarity with operations and relationships on the border. The arrival of the eighty-one Title 10 soldiers changed the working dynamics. Initially, there was some difficulty understanding and accepting the command and control relationships imposed by 1st CONUSA - they seemed to “fix what wasn’t broken,” and replace procedures that worked with untested ones. The difficulty was apparent to all. The collegial working relationship worked out between the USCS and INS with the Title 32 Guardsmen continued but was complicated by the Title 10 Guardsmen whose relationship was closer to that of employee or subordinate.

For the Title 10 soldiers, the geographic dispersion invited cumbersome logistical and administrative procedures and uneven support to subordinate units. Despite the “detailed” status of Title 10 soldiers away from DOD, strict accountability of personnel and military equipment remained mandatory. Also, because USCS and INS-ID had agreed to reimburse DOD for its expenditures, all expenditures had to be justified. Title 10 personnel were subject to a number of administrative requirements the Title 32 soldiers did not have to contend with. For example, USCS and INS were required to submit personnel status and significant events reports on a daily basis in writing. The TSB supervising the mission did not authorize phone service, facsimile machines or computers on which to prepare and submit the information. Some leaders even found themselves turning to their home units of the Michigan National Guard to obtain computers and other administrative equipment essential for the mission. This kind of “mission-first” attitude, while admirable, had the opposite effect and presented an image of success and adequate resourcing which eventually led to difficulties validating additional needs. In at least one instance, soldiers working at the state command and control cell purchased printers and ink cartridges out of personal funds to meet mission requirements. The question remains whether the administrative support should rest with state National Guard authorities or with FORSCOM.

Operational problems also presented themselves to the federalized National Guardsmen. 1st CONUSA made a point of assuring that each Non Commissioned Officer (NCO) and soldier in the federalized Michigan contingent was familiar with and had access to DOD guidance on mission parameters, limitations, and the appropriate memorandums of agreement. Unfortunately the USCS, INS-ID, and INS-BP did not achieve the same level of information dissemination for their personnel. Because they did not have a complete understanding of the memorandum of agreement - the appropriate rules and operating restrictions - the soldiers initially were placed in a difficult position. They could not execute all of the tasks the local border security agents expected. For example, soldiers were directed to move vehicles to secondary inspection points, transport funds, escort persons being detained, and assume responsibility for evidence, all explicitly prohibited in the MOAs.

State aviation detachments had been used previously in a Title 32 status to support anti-drug suppression efforts. While in that status, they could provide surveillance, pursue individuals and vehicles to assist in their apprehension by appropriate authority, and deviate from approved flight plans to investigate suspicious activities. Now that the DOD had agreed to support the border security agencies, the USCS and INS expected a similar amount of capability. However, the aviation detachments served in a Title 10 status and were prohibited from doing any of those things. They could provide limited surveillance but could not pursue or follow vehicles unless the flight path followed the same path as the ground vehicle and could not deviate from a flight plan except in a declared emergency. In addition, the amount of time that could be spent in support of border activities was limited to four hours per day per aircraft and could only be flown in support of the INS-BP.

Morale, Benefits, and Quality of Life Issues

Morale for most of Michigan's Title 32 National Guard soldiers remained high throughout the mission. Helping guard the nation's borders was an opportunity for these citizen-soldiers to make a contribution by protecting the nation. They operated in the regions in which they lived, were familiar with local infrastructure, and often had direct ties with other first responders in local police, fire, and emergency service departments.

Though they were pleased with their contributions to the homeland security mission, many of the soldiers did not receive the same benefits as soldiers serving in a Title 10 status. Most significantly, none of the Title 32 soldiers enjoyed the protection of the Soldiers and Sailors Civil Relief Act of 1940 (SSCRA). Passed by Congress just prior to World War II to provide financial protection for individuals called to active duty in any of the military services, the SSCRA only applies to those on federal active duty (Title 10). In addition to protecting the soldier and his family from foreclosure, eviction, and certain debt collections, the SSCRA protects soldiers from loss of life insurance and entitles a soldier to reinstatement of any health insurance that was in effect on the day before active service commenced.

In Michigan, all soldiers securing the federal border from March through September 2002 were paid according to their federal pay grade. Closer inspection reveals some differences in benefits available to soldiers serving in a Title 10 status and those serving in a Title 32 status (See Appendix B). Other benefits not enjoyed by those soldiers operating in a Title 32 status included not earning veterans' status; that particular benefit is especially desirable, since it is accompanied by points valuable for federal retirement status and mandates a hiring preference for most federal, state, and local government jobs.

The Title 10 soldiers were not from the areas near the border and were required Temporary Change of Station (TCS) orders to proceed to their respective duty locations. Leaders nevertheless tried to minimize any negative impact by devoting care and attention to quality of life. Placing soldiers at duty locations as close to their homes as they could was a major benefit and contributed to positive morale. However, soldiers were billeted in hotels at a cost of approximately fifty dollars per day per soldier and anywhere from thirty minutes to one hour commuting time from their respective work sites. Some soldiers recommended leasing apartments, which were closer to their duty locations and were available at the cost of twenty dollars per soldier per night. Though raised through the chain of command, the issue was never resolved, thus forcing the federal government to pay significantly greater billeting costs.

Conclusions about Border Support in Michigan

Resoundingly, companies and units that produced an after action report indicate that border security was a good mission for the Michigan National Guard. More importantly, civilian agencies and DOD agreed that soldier performance was efficient and effective. Senior and regional supervisors and officials in the USCS, INS-ID, and INS-BP expressed appreciation and gratitude for the contribution of the deployed soldiers. Overall the success of the mission in Michigan was measured by the confidence the inspectors displayed in the National Guard troops, the volume of illegal drug seizures and discovery of illegal aliens.

In general, there is clear guidance for activating Guardsmen to serve in Title 32 and Title 10 statuses. However, the majority of National Guard units are neither equipped nor organized to handle the same mission in a Title 10 and Title 32 status simultaneously. Before federal support to border security began in Michigan in March 2002, the two roles the National Guard serves - federal reserve force and state resource for civil contingencies - remained mutually exclusive.

There are three main conclusions DOD planners and operations experts can draw from the experiences Michigan National Guardsmen gained during their support at United States - Canadian ports of entry. Each conclusion has positive and negative attributes, meaning that there is no clearly preferable or "best case" status. The first conclusion can be made about which status best benefits the soldier. The second can be made about which status provided the most effective method of command, control, training and standards. Finally, a third conclusion can be made about which status most benefited the supported agencies.

The conclusion that provides the best example of a preferable status is that which addresses soldier benefits. Overall, working in a Title 10 status produced more material benefits for individual soldiers. Though the pay is the same, protection under the SSCRA, retirement points, job security, and other veterans' benefits can only be obtained while in a federal status. Some states have a version of the SSCRA at the state level, but not all. Likewise, some have job security laws; meaning employers are prohibited from permanent replacements when an employee is called to serve. However, duty in a Title 32 status allows an easier transition to active duty, and familiar, well-understood chains

of command, administration, and logistics support. Title 32 duty also offers undeniable protection from real or potential violation of the Posse Comitatus Act. The successful precedent of this mission might well offer a similar level of legal protection, especially with regard to the federal borders.

Title 32 status provides the most efficient and effective chain of command - but only from the state level down, because there is no authority higher than that of the state for soldiers serving under Title 32. It also introduces the possibility that each state will have its own system, answerable only to the state Governor. Each of the federal agencies would have to conclude a different support arrangement with each of the Governors making effective control to border security agencies a clumsy and complex process. Title 32 soldiers can be called and report for duty very quickly, but deployment standards vary by state, and thus their quality and readiness status can vary also. Working with soldiers in a Title 10 status ensures DOD involvement in developing uniform training requirements and objective readiness and deployment standards.

Determining whether National Guardsmen can provide better service to the supported agencies in one duty status or another is the most difficult conclusion to make. Support from Title 32 Guardsmen provide avenues to assist law enforcement agencies. That support can also be available extremely quickly and at a relatively low cost to the supported agency, since DOD pays for soldiers mobilized in Title 32 status. However, the standard of that support can vary from state to state and may be of very limited duration, since each state must request reimbursement when its soldiers are mobilized under Title 32 for disaster relief or support to civil authorities. Also, DOD is unlikely to recognize a crisis at the Michigan border without determining that a crisis existed at other borders as well. This is what happened in Michigan - the crisis existed at all of the federal borders, and Michigan's reaction was unique until November, when Arizona also called some Guardsmen to duty. However these two states were unique, and DOD and FORSCOM were working hard to provide equivalent levels of support in all border-states.

In Michigan, it seems certain that because of the recognition that the borders needed to be kept open and factories working and the proactive nature of the state government, the presence on the border of National Guardsmen in both Title 10 and Title

32 status caused little impact on security or daily operations. And, it seems certain that when speed was important, using state active duty converted to Title 32 was the best decision. However, it is just as clear that Title 10 was the appropriate status for Guardsmen once the mission spread to the other border-states and its nature completely understood. What is necessary, then, are strong, well-trained National Guard forces that can respond quickly and decisively across a full spectrum of crises, without waiting for lengthy administrative processes to draw to closure.

Notes

Chapter 6 ... Findings and Recommendations

To try and answer the “how” in providing assistance to federal agencies we developed four basic recommendations. First, an exclusive exemption in the PCA for soldiers working under the Border and Transportation Security component of the Department of Homeland security would provide the legal protection for DOD personnel detailed to work in a law enforcement capacity. Second, implementing a domestic PRC and utilizing TTAD’s provides ample time for federal agencies to hire additional help or improve existing technologies to maintain the required alert level while imposing a one hundred and seventy-nine day limit. Third, it is critical that a single MOA be written immediately to cover the transfer of soldiers from DOD to the Department of Homeland Security. This MOA should include avenues of reimbursement, command and control relationships, and the specific duties to be accomplished by the soldiers. Having a pre-signed, pre-coordinated MOA will eliminate the enormous amount of time expended in transferring personnel from one department to another. This coordination should be significantly simplified with the advent of placing the INS-ID, INS-BP, and USCS under one component of the Department of Homeland Security. Finally, considering the new homeland security responsibilities placed on the states with subsequently minimal funding we propose amending the United States Code Title 32 to specifically state National Guard soldiers may be used for missions in support of Homeland Security. Providing such clear guidance eliminates reluctance to use this status where and when it is appropriate.

Given that homeland defense became the number one priority of the nation and our armed forces, we believe that providing a force of Title 32 soldiers subordinate to state agencies as well as detailing Title 10 soldiers to federal agencies will meet future requirements of direct assistance to the Department of Homeland Security. There is also precedent to transfer Title 32 soldiers to Title 10 when the situation shifts from training to defense. This mechanism could also be applied in shifting soldiers from homeland security to homeland defense as illustrated in chapter 2.

Findings

Historical Precedent

The National Guard has actively participated in the defense of the American homeland for over 300 years. In 1907, National Guard units were assigned the responsibility for manning half of the US coast artillery batteries and fortifications. By 1912, fifteen states had organized 126 coast artillery companies and manned very heavy guns along the East, West, and Gulf coasts. National Guard soldiers continued to man US coastal defenses until the Army disbanded the Coast Artillery in 1947. However, National Guard soldiers resumed their active role in homeland defense when they assisted the active Air Force and Army man air defenses located near major population and industrial centers. For nearly twenty years, from 1955 to 1974 - when the last of the Nike missile batteries were inactivated - the National Guard provided air defense units to counter air and missile threats from the Soviet Union. The numbers are significant: 17,000 Guardsmen, organized in 82 Nike missile batteries, located in fifteen states, and manning 48 of 112 (43%) missile sites.

This particular National Guard experience is not just a simple factoid. During this nineteen-year period, the National Guard was assigned a full-time, federal mission to accomplish while in a state status - a unique circumstance and one that caused a large number of units and personnel to be dedicated to homeland defense. To achieve the necessary level of readiness, the Army and the National Guard agreed that in the event of a Soviet air or missile attack, the Guardsmen would have been immediately ordered to active duty, reporting to their duty stations directly from their homes. Thus, these National Guard soldiers expected and were required to transition extremely rapidly from peace to war, and in their own neighborhoods - just as the colonial Minutemen did. During this same period, other units of the National Guard trained and prepared for possible wars in Europe and Asia. Also, during the 1960s, a period of significant urban violence and social trauma in the US, National Guard soldiers performed as a domestic constabulary.

National Guard soldiers stationed in alert facilities for air defense performed the alert on title 32. When the scramble order arrived the title 10 orders came directly with the order. This was a very easy way to transfer DOD personnel from a state status to a

federal status in defense of our national borders. Similar methods could be used for soldiers placed in a standby or alert status for future law enforcement duties. When the lead federal agency would call for assistance, orders would coincidentally place the individual on Title 10 status.

Recommendations

Throughout the course of our research we looked at the multitude of avenues that are available for the military to assist civil authorities. There also exists the states' abilities to provide assistance to civil authorities and the DOD directives that outline various ways to provide assistance and support to civil authorities. The challenge facing DOD is how to provide the same quality of timely support to short-handed federal agencies that it provides in disaster relief-without unacceptably diminishing its own mission readiness? The argument can be addressed in both federal and state terms. The following recommendations define what the federal government could do to provide direct assistance to civil authorities during preventive measures as well as what could be incorporated at the state level to supply the necessary personnel.

- 1. Congress should pass new statutory authority within the PCA to allow the military to perform limited law enforcement functions - solely involving border security - in conjunction with Federal law enforcement agencies within the Department of Homeland Security.**

The most direct solution to this problem, changing the PCA itself, seems unlikely. In fact, Congress expressed its continuing support of the PCA in the Homeland Security Act of 2002, stating that it reaffirmed its continuing importance. In the past Congress has shown little reluctance to craft exemptions to the PCA. These range from support to local authorities in cases of disaster, to protection of the rights of a discoverer of a guano island. A specific Congressional authorization, stating that military personnel detailed under the direction and control of another agency are exempt from the PCA, would resolve the ambiguities in future situations.

2. Formation of a domestic PRC (Presidential Recall) will provide the needed flexibility for surge requirements by the Department of Homeland Security.

Full mobilization can bring forces of staggering size to bear. Mobilization, however, is a comprehensive, time-consuming process. It has to be. Its goal is to prepare soldiers for deployment to combat conditions anywhere on the globe. It sweeps the willing and the unwilling into military service. Mobilized soldiers cannot easily be put into and removed from active duty. This creates hardship for service members and decreases the flexibility of the force available to support the agency.

The domestic PRC would be an option similar to the 15-day mobilization statute, except it brings soldiers to duty for a maximum of 179 days and in Title 10. The time limit is critical in making sure that the soldiers are used only for surge requirements and not looked upon as hired help. The basic construct of the domestic PRC consists of three basic items. First, to allow soldiers to mobilize at a designated training center within the state eliminating the need for movement to a TSB. Second, to put soldiers from the home of record armory closest to the area of requested support. To do this the domestic PRC requires discretionary mobilization authority meaning that any MOS from a particular unit is subject to activation. This allows planners to put the soldier who resides closest to the work area to be activated. Finally, the domestic PRC has to be limited to a maximum of ten thousand personnel nationally. This serves to protect the states from having any one area over mobilized and thus not allowing the Governor the option of using the National Guard.

Fortunately, the means already exist to give DOD planners that flexibility. Temporary Tours of Active Duty (TTAD) are routinely used to offer volunteers tours of active duty. National Guard and Reserve members may be called to duty for up to a total of one hundred eighty days in any given year. This approach has several advantages. First, it allows for volunteers to step forward prior to disrupting others who would face hardship to go on duty. Second, if the service member's unit is mobilized, the TTAD can be cancelled. Third, National Guard members cannot serve on TTAD without the consent of their Governor - an important safeguard for states that cannot afford to give up soldiers needed for other duties. Finally, TTAD tours are normally limited to one hundred seventy nine days or less - what at first might seem a disadvantage is actually a

reassurance to DOD that soldiers will not be taken away for long periods. The TTAD is an excellent alternative to the domestic PRC and should be utilized whenever possible.

3. DOD should prepare a standardized memorandum of agreement addressing assistance to the Department of Homeland Security - to validate the MOA the Governors of each border state must have signatory approval authority.

The months of time and effort expended on negotiating memoranda of agreements with the supported federal agencies was one of the main shortcomings of the entire process. The result was two fundamentally similar agreements that varied in important details. The DOD clearly has priorities that it would want to include in any future agreement to lend military members to other Federal agencies. A standardized agreement, based on the hard work already done, would serve as a starting point and speed up the negotiating process. Importantly, such an agreement could also describe DOD's accounting plans for reimbursement in sufficient detail to eliminate any misunderstandings.

To complete the process, the Governors of each respective border state must be aware and in agreement with the operating rules and limitations of the memorandum of agreement. Agreements with the State National Guard Headquarters allows for more efficient and localized assistance. This mission featured small groups of soldiers working long distances from sources of military support. National Guard headquarters in the states concerned were ready and willing to help provide support, but faced fiscal problems with doing so.

Memorandums of agreement with state National Guard headquarters, the DOD and Department of Homeland Security would consist of four critical items. One, funding responsibilities and state reimbursement mechanisms are clearly defined. Two, command and control relationships must specifically outline the supported the agency, the controlling authority and the command agency. Third, a state appointed Title 10 detachment commander is critical in providing a legitimate link from the State National Guard Headquarters to NORTHCOM. This would also leave the states involved with the care of their soldiers - an important morale factor. State National Guard Headquarters are the ideal sources for Title 10 administrative support cells able to serve USAR, and

National Guard military members. Finally, a detailed listing of work rules and limitations approved and understood by all signatory representatives.

4. United States Code Title 32 needs to be amended to specifically allow support to Homeland Security missions.

Title 32 allows soldiers to “train” and to perform “other duties as assigned”. The ambiguity of “other duties as assigned” requires a specific clarification. The role of Title 32 should be expanded to include not only “training” but also “soldiers performing duty in support of Homeland Security”. Examples such as guarding nuclear reactors, historical landmarks, airport security, and border security should be attached to the statement. These circumstances are and have been state missions requiring state control under the guise of homeland security. This certainly does not preclude or insinuate that Title 32 should be used for homeland defense.

Title 32 soldiers could provide many types of support to the mission, by performing duty subordinate to state agencies. For example, state or local police could clearly perform traffic control on roads near border checkpoints. It follows that National Guard troops, working for their states, could assist in that mission. Similarly, the state has a legitimate interest in criminal activity near its borders. Helicopters flown by National Guard crews could support state agencies in that mission. Through appropriate agreements, states with extra resources could even make them available to other states. State agencies already work in close cooperation with Federal authorities, and National Guard soldiers would serve as a part of this cooperative force. The best part - these personnel would not face restrictions under the existing PCA!

To prevent potential abuse or overuse we feel that a thirty-day limit needs to be imposed on the total time that a soldier can serve in support of Homeland Security. The soldier may continue serving in Title 32 beyond thirty days only if given the same benefits that are inherent to Title 10. Similar proposals are presently pending legislation.

Conclusion

Homeland security is not a new mission to the National Guard. However, the new magnitude in implementing it is. These four recommendations provide an avenue to fill the gap that presently exists in providing direct assistance to civil authorities. Exempting the PCA, implementing a domestic PRC, developing unified MOA's and expanding the role of Title 32 puts the soldier in a legal and legitimate context to perform the new measures required by Homeland Security.

Notes

Appendix A ... DOD Roles in Homeland Security

Homeland Security

“Roles of DOD”

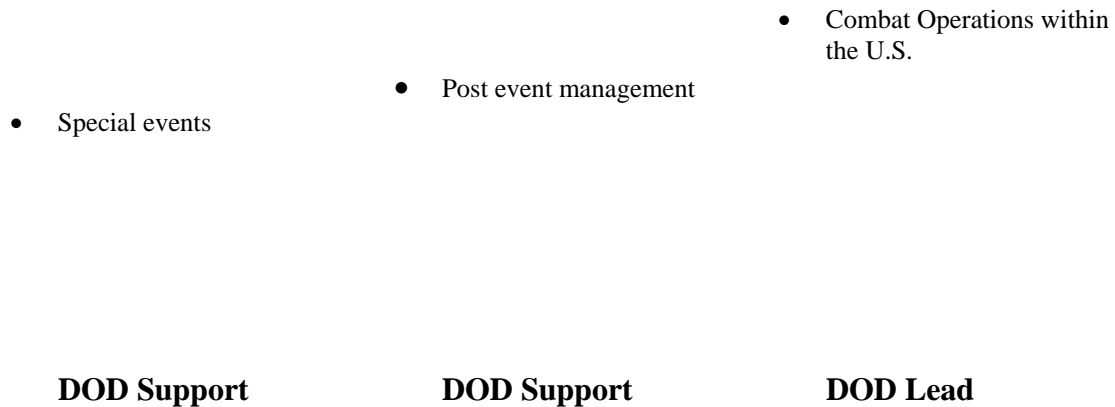


Figure A-1: Roles of the DOD in Homeland Security

Circumstances:

- **Extraordinary:** Require DOD unique capabilities
 - Combat Air Patrols
 - Explosive Ordinance Disposal
- **Emergency:** Augment capabilities of civil authorities
 - Post event management - medical, engineering, transportation and provision of working space
 - Logistics, supply, mobility
- **Temporary:** In time with limited scope, assist and train state and local authorities
 - Special events
 - Training first responders
 - Support to law enforcement

Appendix B ... Duty Status Benefits for National Guard Personnel

Duty Status Benefits for National Guard Personnel.....

	State Active Duty	Title 32	Title 10
Command & Control	State Governor	State Governor	Federal President
Duty Personnel	Federally Organized NG	Organized NG in service of US	AC, RC and National Guard of the US
Duty Location	IAW State Law	CONUS	Worldwide
Pay Provider	IAW State Law	Federal Pay and Allowances	Federal Pay and Allowances
Federal Reimbursement	IAW Stafford Act or Cooperative Agreement	N/A Personnel Costs paid by Federal Funds	N/A Personnel Costs paid by Federal Funds
Tort Immunity	IAW State Law	FTCA	FTCA
PCA Application	No	No	Yes
USERRA	No, IAW State Law	Yes	Yes
SSCRA	No, IAW State Law	No	Yes
Mission Types	IAW State Law	IDT, AT, State AGR & other Federally Authorized	ODT, ADT, AGR & as Assigned, Subject to the PCA
Discipline	State Military Code	State Military Code	UCMJ
Federal Retirement Points	No	Yes	Yes
Other Benefits	IAW State Law	Federal	Federal
Medical	IAW State Law	Federal	Federal
Disability	IAW State Law	Federal	Federal
Involuntary Ordered to Duty	IAW State Law	Yes	Yes
Voluntarily Ordered to Duty	IAW State Law	Yes	Yes

Table B-1: Duty Status Benefits for National Guard Members

Appendix C ... Mobilization Statutes and Force Projections

Mobilization Statutes		
Title	Requisites	Potential Force Projection
Full Mobilization 12301(a)	<ul style="list-style-type: none"> • Requires Declaration of War or National Emergency by the Congress • Requires Congress in Session 	<ul style="list-style-type: none"> • All Reservists including members in an inactive status and retired • No number limitation stated • Duration of War or Emergency plus six months
Partial Mobilization 12302	<ul style="list-style-type: none"> • Requires Declaration of National Emergency • Report to Congress every six months 	<ul style="list-style-type: none"> • Ready Reserve • Not more than 1,000,000 • Not more than 2 year duration
Presidential Reserve Call-up 12304	<ul style="list-style-type: none"> • Requires Presidential notification of Congress • NO Declaration of National Emergency 	<ul style="list-style-type: none"> • Not more than 200,000 • Selected reserve, with up to 30,000 Individual Ready Reserve • 270 days • Now includes WMD incidents
15-day Statute 12301(b)	<ul style="list-style-type: none"> • Service Secretaries may call Ready Reserve up to fifteen days per year 	<ul style="list-style-type: none"> • Annual Training • Operational Missions • Involuntary
Reserve Component Volunteers 12301(d)	<ul style="list-style-type: none"> • Requires consent of the individual reserve component member • Governors must consent to National Guard activation 	<ul style="list-style-type: none"> • All Reservists • No number limitation • No duration stated

All data extracted from Reserves 101 section of the DOD web site.

Table C-1: Mobilization Statutes

Appendix D ... History of the National Guard

History of the National Guard

The Birth of the Citizen - Soldier

The Army National Guard is the oldest component of the Armed Forces of the United States celebrating its 367th birthday in 2003. The General Court of the Massachusetts Bay Colony organized the first militia regiments in 1636. The colonists drew on English military tradition and organized their able-bodied male citizens into militias chartered to protect their fellow citizens from hostile attacks and foreign invaders. Men were selected from the militia ranks to be dressed with matchlocks or pikes and accoutrements within half an hour of being warned. Eventually, the time to assemble was reduced to a minute - hence the name "Minutemen." Typically 25 years of age or younger, they were chosen for their enthusiasm, reliability, and physical strength - and they were the first armed militia to arrive or await a battle.

The Militia is distinguished from the standing Army as a defensive body compared to an offensive body geared to fight wars on foreign soils. The Militia was highly regarded by our country's Founding Fathers. They viewed the Militia as the safeguard against tyranny - standing armies had proven to be inherently dangerous to liberty. Citizen soldiers, under command of citizens from their own towns, would offset any attempt by a standing armed force to impose tyranny upon the common people. The Militia Act of 1792 formally expanded federal policy and clarified the role of the militia. The people themselves would be armed at their own expense and participate in annual musters. These citizens then supplied both manpower and weapons for their common defense and safety.

The concept for an American Federal reserve force was also proposed by General George Washington and Alexander Hamilton in 1792 to allow more federal control of the Army in times of peace and war. Due to the lack of a visible threat, combined with the young republic's regional focus, only a paramilitary structure for Army reserve officer training materialized during the nineteenth century.

The last call for the Militia provided volunteer citizens to the battlefields of the Civil War. In 1867, the Congress suspended the southern states' right to organize their militias until a state was firmly under the control of an acceptable government. The U.S. Army was used to enforce martial law in the South during Reconstruction. Expansion of the military's role in domestic life, however, did not occur without debate or response. Reaction to the use of the Army in suppressing labor unrest in the North and guarding polls in the South during the 1876 election led to Congressional enactment of the Posse Comitatus Act in 1878. Designed to limit the president's use of military forces in peacetime, this statute provided that: "...it shall not be lawful to employ any part of the Army of the United States... for the purpose of executing the laws, except on such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by an act of Congress..."

After the Civil War, wars were fought overseas. The "Militia" was not for expeditionary war making. That was strictly an Army function as stipulated in the constitution. The Militia may be called forth "to execute the Laws of the Union, suppress insurrections and repel invasions". Another separate provision allows Congress "to raise and support Armies". Judicial interpretations lead to the conclusion that the Militia could not serve overseas in a foreign war, only the Army could.

The Dick Act of 1903 replaced the 1792 Militia Act and affirmed the National Guard as the Army's primary organized reserve. In 1908, Congress established the Medical Reserve Corps. The National Defense Act of 1916 formally created a Federal Reserve force and established the National Guard (formally the Militia). Members of the Federal Reserve force are commonly referred to as Reservists. The Reservists have one role - to be a reserve contingent to the standing Army. The law guaranteed the National Guard's role of the State's militia's and as the Army's primary reserve force. The National Guard would have a State and Federal role. Furthermore, the law mandated use of the term "National Guard" for that force. Moreover, the President was given authority, in case of war or national emergency, to mobilize the National Guard for the duration of the emergency. The number of yearly drills increased from 24 to 48 and annual training from five to 15 days. Drill pay was authorized for the first time.

Following the experience of fighting an unpopular war in Vietnam, the 1973 Total Force Policy was designed to involve a large portion of the American public by mobilizing the National Guard from its thousands of locations throughout the United States when needed. Angered that President Lyndon B. Johnson, and then President Richard M. Nixon, declined to call up the reserves during the Vietnam War for fear of generating greater opposition to it, General Creighton W. Abrams, the Army chief of staff, shaped the post-Vietnam mix of active and reserve forces to make sure that when America next went to war with its new all-volunteer force, hometown America would have to go along too.

The National Guard and Reserve are located in over 2700 communities and in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. The Total Force Policy required that all active and reserve military organizations of the United States be treated as a single integrated force. Reserve component units are organized, trained, and equipped to the same standards as their active component counterparts. A related benefit of this approach is to permit elected officials to have a better sense of public support or opposition to any major military policies or operations.

The Ready Reserve

There are over 1.2 million Ready Reservists available to defend this nation's interests as well as the homeland. These 1.2 million patriots work everyday jobs and participate in everyday activities. The little league baseball coach, the plumber who fixed your faucet, the pilot that flew you on your last vacation, the nurse who comforted your son when he needed stitches, and of course the policemen and firemen who work everyday to protect America, these are your selected Reservists. These men and women dedicate a minimum of 39 days per year training for their wartime mission. It is not uncommon to find units that average over 100 days per year training and supporting peacekeeping missions. Often times these individuals sacrifice opportunities for advancement in their civilian work to accommodate this nation's fighting reserve force. They work and fight in a military that is taking casualties in places such as Afghanistan, dealing with all the wartime trappings of separation and sorrow. But their spouses and children, who were never part of a self-supporting military culture the way most active-

service families are, remain in a civilian world where neighbors and friends have long since put away the flags they flew after 9.11 and are going on about their daily lives.

The Selected Reserve is commonly referred to as the reserve component (RC) and is composed of the “Reserves” and the “National Guard”. The basic peacetime difference between the National Guard and Reserve is that the National Guard is an asset of each respective state conforming to the laws of our constitution, in abeyance with the laws of each respective state, while the Reserve is strictly a federal asset. The reserve component is a vital and essential contributor to our nations force structure in both peacekeeping missions and wartime mobilizations. The following table illustrates the breakdown of personnel between the active component, the reserves and the National Guard:

Service	Active	Reserve	Guard	Total
Army	480,000	205,000	350,000	1,035,000
Air Force	359,000	76,000	107,000	542,000
Navy	376,000	88,000		464,000
Marines	173,000	40,000		213,000
Coast Guard	36,000	8,000		
DOD Total	1,424,000	417,000	457,000	2,298,000
Reserve Total		874,000		

Table D-1: Force Structure of the DOD

Discounting the Individual Ready Reserve (375,000), the Selected Reserve (874,000) makes up thirty-eight percent of the entire force. If one factors in the Individual Ready Reserve, the Ready Reserve comprises forty-six percent of the total force structure. An even more specific look at the Army reveals that fifty-four percent of the force structure exists within the reserve component. These numbers are continually shifting as our founding fathers had designed the military to become more and more reliant on the reserve forces during peacetime and to build our standing military rapidly and efficiently during wartime. In the post Cold War era, mobilizations have occurred more and more frequently because much of the force structure capabilities were transferred from the Active components to the National Guard and Reserve.

Three Soldiers in One: The Natural Flexibility of the National Guard

Before the collapse of the Berlin Wall, reserves contributed roughly 1 million days of active duty annually. After rising to 39 million personnel-days when 267,000 Reservists were activated for the Gulf War, that figure averaged about 13 million days

per year during the balance of the 1990s. This service is accomplished in either Title 10 or Title 32 Active Duty. Besides this, Guardsmen are also called to serve active duty for their states in times of crisis giving the National Guard a “dual status”.

This dual status allows the National Guard to perform in two discrete roles working either for the Governor or for the President of the United States. The three different statuses the Guardsmen can occupy are as follows:

- *State Active Duty*
- *Title 32 Active Duty*
- *Title 10 Active Duty*

See Appendix B for the allowances, benefits, and laws specific to each type of duty.

While under the above authority, Reservists may also volunteer to be activated for duty. This requires the consent of the Governor. Let me take a few minutes to point out the pros and the cons about volunteering for service. Volunteer mobilizations are feasible only if the tasking allows enough people not mobilized to form a rotation schedule. That assumes that the excess personnel will volunteer in the future. Generally, volunteering for service allows units to rotate troops at varying intervals as long as they meet the needs of the supported agency or command. This flexibility also allows the troops to participate in their unit training assemblies and maintain their specific skill sets. The con is that if there is a wholesale activation, the individuals who volunteered are forced into a mobilization; their time spent on volunteer status does not count toward the maximum service of a Presidential Reserve Call Up or a Partial Mobilization. In other words, if the President activates me for 2 years and I have already served 6 months in a volunteer status, my total time served will be 2 years and 6 months. Sometimes, this period of 6 months may be crucial to the reservist’s civilian job.

Selected Reservists also serve in an inactive status, generally referred to as the drill weekend. This inactive status provides the soldiers an opportunity to participate in weekend training periods to maintain a certain level of readiness.

Reservists may be called to serve their community, their state and their country in the course of a year. From the community’s perspective they are citizens familiar with the local authorities and the local area. From the state’s perspective they are dedicated to

the protection of the property that supports the life and liberties of their families. From the Federal perspective they are highly trained and motivated individuals ready to serve their country at a moments notice.

The National Guard ties every firehouse and police station to the Pentagon, and every State House to the White House. The Reserve Component provides critical ties with our civilian population and our elected officials. Following the events of September 11, 2001 Selected Reservists were activated throughout the country in all three statuses - State Active Duty to provide protection of critical infrastructure and assets, Title 32 to provide security at our airports, Title 32 and Title 10 to protect our borders, and Title 10 to protect our skies.

Appendix E ... Memorandum of Agreement Between INS and DOD

Appendix F ... Memorandum of Agreement Between DOT and DOD

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